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No. _____

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In The
Supreme Court of the United States

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KASHI NATH TIWARI,
Petitioner

vs.

The Board of Regents of the University System of Georgia, et al.,
Respondent,

_____

On Petition for a Writ of Certiorary to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARY

_____

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QUESTIONS PRESENTED

Petitioner Tiwari, a conservative free-market academic, has been penalized by Respondents for his conservative free-market views against the prevalence of market-impeding forces (anti-Semitism, unlawful employment practices) that constrain the market efficiency by eliminating the most-productive scholars (Jews/others) from its campus, replacing with less-qualified anti-Semitic elements. Should petitioner's opposition to anti-Semitic/segregationist practices of state-officials be considered an exceptional civic service to our nation. Should petitioner's support for superiorly-qualified Jewish-intellectual in faculty-selection process (and petitioner's refusal to go along in conspiracies by state-officials to deny opportunities to Jews) be considered as national civic service. Should conspiracies of Georgia state officials to deny opportunities to Jews be considered a disservice to the nation

1. In professor's cases there is an intra-circuit and inter-circuit conflicting opinions to be resolved by this court. Should this court condone apartheid in judicial decisions of the South: one decision for Caucasian-professor-plaintiffs, while another for others. Justice Cardozo "it will not do to decide the same question one way between one set of litigants [Caucasian-professors] and the opposite way between another [Jews, petitioner Tiwari]." Should this court exercise its supervisory power and open the door for Petitioner Tiwari for a hearing, for the court below closed its door on him, *de-facto,* waving a sign that the judicial system is meant for our-kind-of people only "for-us, by us, and of-us;" The court below indicates Caucasian-professor-litigants (Kaspers, Kemp, Levingston, Palmer, Koch, Katz) will advance their cases to the Jury of American Public, but others are barred by its discretion.

2. In employment-cases, should university-officials enjoy any special immunity, while even the president of the U.S., Mr. Clinton in Paula Jones case (supreme court, 95-1853) did not.

3. When a federal Magistrate writes a prejudiced opinion knowingly establishing "false" as "truth" and "truth" as "false," which are contrary to court records, then it is one those rare occasions where this supreme court must intervene to right the wrong. The supreme court must not let the perjury and falsifications by state public officials of Georgia, be established as truth without proper scrutiny by this court

PARTIES TO THE PROCEEDINGS

Petitioner is Kashi Nath Tiwari.

Respondents are:

The Board of Regents of the University System of Georgia,
Michael D. Curley, individually and in his official capacity,
Roger C. Tutterow, individually and in his official capacity, and
Timothy S. Mescon, individually and in his official capacity,

(these Institutional and Individual Defendants are officials of the Kennesaw State University, Kennesaw, Georgia, as set forth in detail in Petitioner's complaint in the U.S. District Court, Atlanta)

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OTHER AUTHORITIES

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For an Extensive list of table of Citations, see Appendix at A74. that has been submitted to the United States Court of Appeals for the Eleventh Circuit (No. 98-9274) in the Brief Of Plaintiff-Appellant, Kashi Nath Tiwari. These citations are very extensively defined; it is a part of the court record and will be made available upon request by the Justices of this Supreme Court.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Kashi Nath Tiwari respectfully requests that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Eleventh Circuit and the United States District Court, Northern District of Georgia, Atlanta Division.

OPINION BELOW

The decision the United States Court of Appeals for the Eleventh Circuit is reproduced in Appendix (A1-A2). The decision/opinion of the United States District Court (Northern District of Georgia, Atlanta Division) is reproduced in Appendix (A3-A19). The court of appeals' order denying the petition for rehearing is reproduced in Appendix (A20). Petitioner is not aware whether these opinions are reported. Magistrate Judge's Order denying pivotal-evidence (professorship-resume of Caucasian through plaintiff's motion to compel) is reproduced in Appendix (A21-A22).

JURISDICTION

The decision of the United States Court of Appeals for the Eleventh Circuit was entered on April 22, 1999. The court of appeals' order denying the petition for rehearing was entered on June 9, 1999. The decision/opinion of the United States District Court (Northern District of Georgia, Atlanta Division) was entered on September 29, 1998. Magistrate Judge's Report/Recommendation and Order denying pivotal evidence (professorship-resume of Caucasian through Plaintiff's motion to compel) were entered on the same day, August 14, 1998. The jurisdiction of this court is invoked pursuant to 28 U.S.C. Section 1254 (1).

Constitutional And Statutory Provisions Involved

Appendix (A23-A28) of this *Petition for a Writ of Certiorari* contains some of the pertinent provisions of the Fourteenth Amendment to the United State Constitution; Prohibited acts: 29 U.S.C. Sec. 2615 (a, b).; Title VII of the Civil Right Acts of 1964; 42 U.S.C. Sec. 2000e-2 (a,k,m); 42 U.S.C. Sec. 2000e-3 (a, b) ; 42 U.S.C. Sec. 2000e-5 (f) Unlawful employment practices, and federal rules of civil procedures 56.

STATEMENT OF THE CASE

Anti-Semitism and Retaliation is so well-entrenched at KSU: Petitioner Kashi Nath Tiwari is a free-market academician, who has been retaliated against by Respondents for his conservative free-market views against the prevalence of market-impeding forces (anti-Semitism, unlawful employment practices) that constrain the market efficiency by eliminating the most-productive scholars (Jews/others) from its campus, replacing with grossly less-qualified anti-Semitic elements.

Anti-Semitism and retaliation has been a well-entrenched tradition on the KSU-campus of the South in employment, promotion, and tenure. KSU-officials have made the national headlines with their blatant acts of anti-Semitism/retaliation as evidenced by the lawsuits of Candace Kaspers, Bari Levingston, (Jew), Martin Katz, (Jew), Nadine Koch, (Jew) Judy Palmer (Jew), Alan Schwartz, (Jew). Brotman (Jew) was denied chairmanship and Reibman's (Jew) job was terminated. It became a national headline when Candace Kaspers (KSU-official) was fired in retaliation for her opposition to anti-Semitism by KSU-agents (as proven in court; Atlanta-federal-case 95-954-wco). It was a national headline when Christina Jeffrey (KSU professor recommended/withdrawn for congress librarian by Newt Gingrich) was suggested to have had a different view on holocaust education. It was a headline news when Professor Jane Kemp was unlawfully retaliated by BOR-agents as proven in court (651 F. Supp. 495; 1986 U.S. district; civil-action C83-330A)). Georgia attorney-general's office (the legal collaborators in the anti-Semitic cause of KSU-officials) made the national headlines with the admission of adultery and hypocrisy in Job-denial to a Jewish-female (Robin Shahar). Numerous other anti-Semitic acts on the KSU-campus have prospered. Seemingly, KSU-campus has become a center for anti-Semitism and retaliation. In one of the most appalling incidences of anti-Semitism, the anti-Semitic KSU-officials denied chairmanship to Brotman (Jewish-female) and gave it to a grossly less-qualified Caucasian (Tutterow), of which only an anti-Semitic group could be proud of. By glancing at Brotman's resume (Exhibit-A) and Tutterow's resume (Exhibit-B), even an illiterate person could see the height of anti-Semitism. Brotman (Jewish female) is far superior to Tuterow by every criterion – it is a day and night difference - a glowing example of anti-Semitism.

Petitioner Tiwari is the only faculty to support the candidacy of Brotman against the wishes of anti-Semitic officials. NEWT GINGRICH has taught here, which is about the only good thing that ever happened on this campus; the rest is marred with the prevalence of anti-Semitism/discrimination.

Depositions of Curley and others reveal that Petitioner Tiwari's opposition to anti-Semitism has not been tolerated. According to the depositions, it is evident that the Respondents have been retaliating against Petitioner Tiwari for his unwavering-support for Jews to the extent that they even falsely denied that Tiwari ever attended 1991-PAC meeting, and downplayed his service of the 1997-recruitment-process. Following is a sample of retaliatory statements made against Tiwari by KSU-officials. In retaliation for Tiwari' singular-critical support and vote for Reibman (Jew) during the 1997-recruitment process, Curley derided Tiwari's internal-service by testifying that "he [Tiwari] lost good graces." of Caucasian committee members (Curley-depo-104). There were numerous disparaging remarks hurled against Reibman (Jew) by Caucasians during this meeting. In retaliation for Tiwari's singular-critical-support for Brotman (Jew) during 1995-chair-search, Curley retaliated against Tiwari stating: "service is a singular but critical area of concern... an impediment to promotion." [Curley, October 30, 1995]. In retaliation for Tiwari's singular-critical-support for Brotman (Jew) during 1991-PAC, Curley perjuriously stated that "Tiwari never met with the committee" (Curley-depo-56)." (At 1991-PAC, Brotman had submitted her portfolio for a review, where Caucasians were planning to insert a bad-review for her. Tiwari supported Brotman and vigorously opposed Caucasian-negativity against the Jewish-female (Brotman)). There were numerous disparaging remarks hurled against Brotman (Jew) by Caucasians during this meeting. In retaliation for Tiwari's singular-critical-support for Jews, opposition to anti-Semitism, and discriminatory employment practices, KSU-agents instructed the Georgia-attorney-general to block the future employability of Tiwari nationwide, and smear his name by contacting 33 of Tiwari's professional-peers (deans and Chairs) who had nothing to do with internal-service (a pretext that had been used by KSU-officials to holocaust Tiwari's career). Internal-service can be vouched by only campus-faculty and not by the national professional-peers of Tiwari. The sole intent of AG-KSU-agents' such retaliation was to damage Tiwari's professional reputation and block career mobility.

Petitioner Tiwari: Petitioner Kashi Nath Tiwari is a conservative free-market academic; who exercised his free-speech right (on a matter of grave public concern) by opposing the prevalence of market-impeding forces on KSU-campus that infringe on academic-freedom, promote anti-Semitism, transgress students-rights, and perpetuate unlawful employment practices against highly-qualified Jews/Petitioner. As a KSU-faculty since 1988, Petitioner Tiwari has provided a superior level service to the children of the people of Georgia and the country through his finance-scholarship, finance-teaching, finance-profession-leadership, finance-profession-service, civic-service, and internal-service. Petitioner has provided "above-expectations" (highest rating) contributions to KSU for the years, 1988-89, 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95. Petitioner Tiwari's department-peers (the only ones with appropriate Ph. D.s in finance/economics and thus so uniquely qualified to judge Tiwari's contributions to his discipline) unanimously and strongly recommended Tiwari for professor and stated: *"You are a dedicated teacher, perhaps the most dedicated at Kennesaw State College. Your willingness to extend your help to all your students at all times is beyond compare. Your students are fortunate to have the benefits of both your knowledge and energy. Your professional development is equally_impressive. You have many publications, many presentations, and many other conference roles to your credit. You are indeed a scholar. We commend you for your outstanding work and are **strongly** recommending you for promotion... **unanimously** agreed to recommend you for promotion to Professor"* Tiwari's department chair (Caucasian) wrote: *"I have received your portfolio and am pleased to support your promotion to professor. Your portfolio demonstrates what I know to be true: a dedication and disciplined commitment to teaching and research, and professional service of remarkable proportion. Your accomplishments are at a pace exceeding normal expectations. I know you will continue to exercise the same intense level of effort demonstrated in the past and that you will continue to bring scholarly prestige to the department, school and college."* In two of the many other glowing recommendation letters, Professor Gene Henssler and Professor Ladd Kochman (KSU-professors of finance, the only ones with Ph.D. in finance) strongly recommended Tiwari for promotion to full-professor in finance (see Appendix at A29-A36).

Respondents BOR/KSU-officials Retaliatory Misconduct:

In retaliation for Petitioner Tiwari's opposition to anti-Semitism and unlawful employment practices, KSU-officials continued to deny him the appropriate rank and salary (latest denial occurred in 1995-96), and instead continued to promote grossly less-qualified faculty. The retaliation was swift and instantaneous since the same very KSU-officials submitted glowing evaluations during the pre-retaliatory period (Appendix 37-A44) presents both the pre-retaliatory period evaluations and regulatory-period evaluations). In fact, subsequently in collaboration with their counsels (attorney-general officials), KSU-officials launched a massive scale multi-pronged strategy in attempt to decrease the teaching-research-service productivity of Tiwari to rationalize their future retaliatory actions. The Respondents/Defendants (in collaboration with attorney general's office) acted with malice, willfulness, wantonness, conscious indifference, and callous disregard to the result of their pre-meditated actions against Petitioner/'s federally protected rights. Respondents' retaliatory misconduct against petitioner (in denying appropriate rank-salary) were intentional, deliberate, calculated, and pre-meditated to conceal the reasons for the actions taken. Petitioner was chastised for speaking out against a long-standing and well-entrenched preferential disparate mistreatment to Jews/petitioner. The petitioner, who is a conservative free-market academic, has the duty and obligation to common citizens by speaking out against the prevalence of anti-Semitism/discrimination that impede and block the efficiency of the free-market system. On March 12, 1997, Petitioner filed his Complaint (R1-1).

Attorney-General's retaliation: Not to be left behind in the cause of anti-Semitism and retaliation in the deep-South, the collaborating AG-officials (counsels for Defendants) joined the retaliatory-cause and proceeded to destroy Tiwari's reputation and block his employability nationwide, isolating Tiwari from all other white-litigants. This was a perverse discriminatory step by AG-officials, as it was not done to other white-litigants. The defendants' counsels have knowingly and willfully collaborated with BOR-KSU-agents in making false and fraudulent statements to the federal-court against Petitioner to defraud the judicial process to obtain judgment and generate adverse-employment-effect against Petitioner . (AG-agents, BOR-KSU-agents are co-workers – working for the same entity, State of Georgia). In

retaliation, KSU-officials have committed perjury during depositions; and, they have made false and fraudulent statements to the federal-court against Petitioner to defraud the judicial process to obtain a summary-judgment. Using the color of law and false pretexts, AG-officials have blocked Tiwari's employability nationwide. The officials of the attorney-general of Georgia have zealously collaborated and conspired with KSU officials in such illegal acts of retaliation/discrimination and in holocausting the careers of Jews/petitioner. AG-officials have made false claims in the court that there is no private cause of action under OCGA 45-19-29, 45.

Identification of the Parties: Petitioner Kashi Nath Tiwari was first employed as an Associate Professor at Kennesaw State College (now known as Kennesaw State University; hereinafter, "KSU") in the School of Business (now the College of Business) in Kennesaw, Georgia in June of 1988. R1-1, ¶10; R1-6, ¶10. Petitioner is a United States citizen born in India. R1-1, ¶1; R1-6, ¶1; he was 45 years old at last promotion-denial. Petitioner has been denied promotion to full professor in 1992-93, in 1994-95 and in 1995-96. R1-1, ¶57; R1-6, ¶57. Respondent/Defendant Michael D. Curley was Chairman of the Department of Economics and Finance at KSU's School of Business from 1988 to December, 1995. R1-1, ¶3; R1-6, ¶3. Respondent/Defendant Roger C. Tutterow is Chairman of KSU's Business School's Department of Economics and Finance since his appointment in December, 1995. R1-1, ¶4; R1-6, ¶4. Respondent/Defendant Timothy S. Mescon is Dean of KSU's School of Business. R1-1, ¶5; R1-6, ¶5. Respondent/Defendant, Board of Regents of the University System of Georgia, is vested with the government, control, and management of the University System of Georgia and all of its institutions. KSU is a part of the University System of Georgia and, hence, is governed by the Board of Regents. R1-1, ¶6,7; R1-6, ¶6,7.

Course of Proceedings: On March 12, 1997, Petitioner filed his Complaint (R1-1) in which he raised claims pursuant to Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e et seq, and 42 U.S.C. § 1981 for national origin, race and color discrimination and retaliation; 42 U.S.C. § 1983 for violation of his rights under the Equal Protection Clauses of the United States Constitution, and pursuant to the Equal Protection Clause of the Georgia Constitution, the Age Discrimination in

Employment Act of 1973, 29 U.S.C. □□ 621-634, and O.C.G.A. □□ 45-19-29, 45-19-44, and 45-19-45. (R1-1). On April 30, 1997, Defendants filed their Answer. (R1-6). Following discovery, on February 3, 1998, Defendants filed a motion for summary judgment on all of Petitioner 's federal and state law claims (R2-20). On August 14, 1998, Magistrate Judge C. Christopher Hagy issued his Report and Recommendation (R&R) recommending that Defendants' motions for summary judgment be granted as to Petitioner 's claims under federal law and recommending that Petitioner 's state law claims be dismissed without prejudice (R4-40). On August 28, 1998, Petitioner filed objections to the Magistrate Judge's report and recommendation. (R5-43). On September 29, 1998, United States District Court Judge Orinda D. Evans entered an Order adopting the Magistrate Judge's Report and Recommendation (R5-45). On September 30, 1998, judgment was entered in favor of Defendants (R5-46). Petitioner filed a timely Notice of Appeal on October 5, 1998 (R5-47). The decision/opinion of the United States Court of Appeals for the Eleventh Circuit, affirming district court's ruling, was entered on April 22, 1999. The court of appeals' order denying the petition for rehearing was entered on June 9, 1999.

REASONS FOR GRANTING THE PETITION

This is one of a kind case that exemplifies the adverse effects of market-impeding forces that attempt to block the efficiency of our market system to the detriment of the very fabric of our society. Petitioner Tiwari, who is a conservative free market academic, was not only retaliated by the Respondents, but was also subjected to a differential treatment by prejudiced judicial machinery of the South.

Review should be Granted to Strike Down the Prejudicial Judgment of the Court Below

Magistrate's R&R is seemingly prejudicial and contradicts the court records. The subsequent judges were simply "sign off" officials who did not even bother to glance at the court records that contradicts Magistrate's reports-recommendation, and they simply stated "we affirm," thereby providing an umbrella-defense to Magistrate's the prejudicial R&R. (for details on page by page erroneous statements of the Magistrate, see appendix at A62-A73)

Magistrate's Prejudicial Judgment: Not to be outdone in fostering the cause of retaliation/discrimination against Tiwari, the Magistrate joined the fray on the Defendants' side and wrote (on August 14, 1998) a 53-page long report and recommendation, R&R, (simply cut-paste from Defendants' briefs) in such a contradictory and inconsistent manner that it simply deviates from norms of the judicial-process. Not even a single statement made by the Magistrate is correct, his statements are in stark contradiction with the court records; and worse, his opinions are based upon false and fraudulent statements of the defendants and their counsel defying published KSU-guidelines for promotion. In order to protect the Defendants, the Magistrate did not even allow the most pivotal-evidence in the case (promotion-resumes of Caucasians) for which Tiwari had filed "motion to compel." As a matter of fact, Magistrate submitted the dismissal of compel-motion and R&R on the same day, thereby not allowing Tiwari any chance for a request for rehearing on the compel motion. (of course, Magistrate cleverly worded his compel-motion finding) Without this pivotal-evidence how could Tiwari help court compare Tiwari's credentials with those of grossly less-qualified Caucasians.[1] At numerous places in his R&R, the Magistrate is stating something which is not even claimed by Defendants (in fact, unwittingly, Defendants' lawyers claim contrary to that); but nevertheless it helped Defendants cause of retaliation. A glowing example of Magistrate's bias in favor of Respondents is the following: Magistrate apparently is so embarrassed by the inferior-qualifications of the Respondents' comparators ("Alan Schlact" proffered by Defendants) that he did not even address the issue of the comparator Schlact's grossly inferior credentials. Magistrate went around attempting to come up with something of his own to protect the Caucasian Respondents. The prejudiced Magistrate even went a step further to protect the Defendants, he claimed that professor-cases are very different from regular employment cases and cannot be determined by the courts,

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[1] Respondents' counsel, attorney general, went on a harassing spree, asking for travel-vouchers, rejection-letters, confidential-referee work, etc., notwithstanding that Respondents had already found Petitioner's scholarship to be superior, commendable, and notable; "scholarship is not limited to publication." The attorney-general should be mindful that these items should be furnished for Caucasian-professors as well; AG is hiding the promotion-resumes of Caucasians to cover up the misdeeds of the Respondents.

not withstanding that all of the white-professors (Kaspers, Kemp. Levingston, Palmer, Koch, Katz who sued BOR-KSU) have been allowed to advance their cases to the Jury by the same U.S. district court in Atlanta); and across the country there are tons of professors-cases that are won by white-professors (in 1999, McNier, Garmon). (Did the Magistrate mean that only inferior-race-professors should not be allowed to go in front of the jury of American public, but it is O.K. for white-professors to go for a jury trial). To help the cause of Caucasian Respondents, the Magistrate even deliberately used incorrect judicial standards, which has already been unanimously conceded by the 11th Circuit judges. This was the first case for this Magistrate (who had been a defense-lawyer for decades until Tiwari's case), but it is not just a disastrous performance of a rookie; it is much deeper than that, it is a case where prejudices are continually getting entrenched in the judicial system – and at this pace the judiciary will become a subject of public debate. Even though rendering a prejudicial-decision and using incorrect judicial standards, the Magistrate/Judge could not help but concede to the fact that Petitioner was qualified for full-professorship. Magistrate/judge is seemingly so embarrassed by the petty-retaliation of his Caucasian-brethren that he deliberating avoided addressing the itemized-retaliations listed in ❶81, 82,83 of the complaint (R1). Likewise with respect to wage disparity, the court records clearly indicate that Tiwari's finance-teaching, finance-scholarship, finance-profession-service, and finance-profession-leadership is at a level far superior to all of the finance-salaried Caucasians combined together; but the Magistrate seemingly is so embarrassed by the conduct of the respondents that he went around to defend them by comparing Tiwari with those who have economics-teaching, economics-scholarship, and economics-service. (for page by page erroneous statements of the Magistrate, see appendix at A62-A73 and at A45-A61). Should Magistrate/Judge be allowed to function as a defense-lawyer favoring white-defendants and prejudicing against the Petitioner.

District-Court Judge's Negligent and/or prejudicial Order:

Magistrate's prejudices/mistakes (in all respects: contents, text, caption) in his R&R are verbatim repeated by the district judge in the Order, which leads one to believe that Judge was simply a "sign-off" official; the Order was seemingly prepared by the Magistrate himself. (Preparing the Order for the Judge to sign,

the Magistrate has repeated the error even in the caption; both in R&R and Order, it erroneously appears University of Georgia, rather than University System of Georgia.) While the Magistrate was a rookie (this was his first case), the Judge is a veteran of over two decades. It is inconceivable that a veteran judge (ex defense-lawyer) will use incorrect judicial standards against Tiwari (as conceded by 11th Circuit Judges); the district-court judge it appears simply signed the Order without reading it and/or it was simply a prejudicial Order.

The 11th Circuit Court of Appeals: Seemingly, none of the appeal-judges even bothered to review the case. Using a pretext (that this is a professor-case and hence is automatically untouchable by the court system), the Court of Appeals seemingly did not bother to even casually glance at the facts presented; only after repeated oral arguments that it conceded that the Magistrate and Judge have used incorrect judicial standards. Providing an umbrella-protection to the prejudicial incorrect judicial standards (used by Magistrate/Judge), the court of appeals, simply stated that "we affirm." During the oral arguments, the Guest Judge (other two judges concurring) kept repeating only one sentence to the effect that he wrote an opinion on another professor-case in his 8th Circuit, stating that professor-cases were specialized and could not be handled by courts or jury. That opinion may have been relevant for the stone-age apartheid-era and apparently oriented for Blacks. As presented above, all white-professors have been allowed to advance their cases to the jury in the Atlanta U.S. district court and across the country (exclusively for white-professors only, no Blacks as yet). Even in the Guest Judge's 8th Circuit, white-professors have been allowed to advance their cases to Jury and have won.

This Court should Grant Review, because Retaliation for Opposition to anti-Semitism cannot be tolerated: As mentioned above that the depositions of Respondents reveal that they retaliated against Tiwari because of his opposition to anti-Semitism. Nuremburg trial clearly proved that a civilized world can neither tolerate anti-Semitism nor the retaliation for opposition to anti-Semitism.

Glowing pre-retaliation period evaluations were suppressed by prejudiced Magistrate and he highlighted only a few lines from the retaliatory letters of the retaliation-period. (see appendix at A37-A44). One wonders how Magistrate will defend Respondents in anti-Semitic selection of grossly less-qualified Tutterow and rejection of Brotman (Jewish female) for Chair – as Brotman (exhibit-A) is far superior to Tutterow (exhibit-B) by every criterion

Incorrect Judicial Standards applied against Petitioner: The Magistrate applied incorrect judicial standards against Tiwari's case which was simply affirmed by the "sign off" officials of the appeal-courts. Appeal-court conceded that Magistrate has applied incorrect standards, but nevertheless provided an umbrella-defense for the Magistrate by simply affirming and stating that there is not sufficient evidence of retaliation (Appendix A1-A2). To remedy it and bring fairness, this court should grant a review

Request for Pivotal Evidence (faculty promotion-resumes) was not Granted: The Magistrate has made a history-making landmark prejudicial decision by dismissing Petitioner's motion to obtain the promotion resumes of Caucasians to provide sufficient evidence of disparate treatment (Appendix A21-A22). Petitioner requested for the promotion-resumes of white-professors which was not granted. Without this pivotal evidence, Petitioner cannot possibly demonstrate that less-qualified Caucasians have been exclusively granted promotion. The prejudiced Magistrate and Respondents cannot have both ways: First, Magistrate is not granting the production of Caucasian's promotion-resumes, and then the Magistrate is claiming that Petitioner has not presented sufficient evidence of disparate treatment. How can petitioner provide sufficient evidence when the evidence is not allowed. (if Lewinsky had not been allowed to present the crucial evidence (her "dress"), Mr. Clinton would have never apologized to her or the public; and Mr. Clinton would have never be sanctioned by $90,000 by Judge) However, elsewhere, in Berkley, CA, the court allowed promotion-resumes of Caucasians to be produced (see Wang v. Regents of the University of California-Berkley, No. 714915-3; Alameda County Superior Court. Why did the magistrate not allow the production of the promotion-resume of Caucasians - so pivotal in the instant case to prove the disparate treatment of the petitioner by comparing the inferior credentials of Caucasians. Why are AG-KSU-agents

concealing the promotion-resume of Caucasians? Why are AG-KSU-agents so reluctant to produce the promotion-resume of Caucasians? Why are AG-KSU-agents afraid of the American Jury, if anything they have the upper edge in the Jury demographics. It shows the extraordinary zeal on the part of white-magistrate/judge to defend the white-defendants by collaborating in concealing the promotion-resume from the American-Jury. Therefore, this court should grant a review.

Even though Paula Jones lost the case and she was to pay the costs to Mr. Clinton, it just turned out that now Mr. Clinton has to pay the costs to Paula Jones. Should the petitioner pay court-costs to Defendants when a summary-judgment has been obtained by making false and fraudulent statement to the court by state-officials (Defendants and their counsels attorney general of Georgia), and when prejudiced Magistrate attempts to act as a defense lawyer for the Defendants. If court grants a review in this case, the court documents will show that the Respondents and their Counsels have obtained the summary judgment by making false and fraudulent statements to the federal court. Like Clinton, it will be the Respondents who will be reimbursing the costs to Tiwari.

The Court below held a Pre-conceived Prejudicial-Opinion that Tiwari's Case was simply a Generic Professors-Case which Jury cannot Grasp

Through a preconceived notion that professors-cases are untouchable, the court below attempted to absolve itself of its judicial duty by simply stating "not sufficient evidence of retaliation and discrimination" and "we affirm," without proper review of the fact that this case is very unique. This case is very different from regular research-oriented university-cases where "publications-deficiency" is used as a pretext for retaliation and tenure-denial; in those cases it is quite conceivable that a jury of commoners might be unable to decipher the academic mumbo-jumbo, and as such university-officials may succeed in getting away with their misdeeds by confusing the jury. Unlike research-oriented schools such as Harvard-Yale-UGA, the petitioner's school (KSU) is a small teaching-oriented institution where publication (per KSU-manual) is neither an issue, nor it is even required since "scholarship is not limited to publications." KSU-officials have consistently acknowledged that Tiwari is a notable

and distinguished teacher (the primary focus of a teaching-oriented school like KSU). Moreover, for the latest 1995-promotion-denial, KSU-officials used only "internal-service" as a pretext for professorship-denial (KSU-officials applauded petitioner Tiwari for his accomplishments in scholarship by stating that Tiwari's scholarship is "superior, commendable, and notable."). It is this alleged "service-deficiency" issue that can be properly evaluated by no one else but the jury of commoners. The jury might not be able to understand "publications" (which is not an issue here), but jury can easily understand that Tiwari's "internal-service" by opposing anti-Semitism and apartheid is of highest quality and is in perfect conformity with upholding the constitution of the United States; likewise a jury can very understand that KSU-officials enti-

Unlike the pretext of "publications" (which is not an issue here), it would not take a rocket-scientist to understand that opposition to anti-Semitism and apartheid is an "internal-service" and a civic-service." Even a Janitor is perfectly capable of understanding that anti-Semitism is wrong and Tiwari's opposition to anti-Semitism is a "service," while anti-Semitic KSU-officials' acts are a "disservice" and are in violation of the constitution of the United States. Moreover, if a jury of common-people can be trusted to judge advanced computer-oriented "Micro-soft" cases and bankruptcy-cases, they can easily be trusted with "anti-Semitic/apartheid" oriented cases.

There are four types of Services: campus-service, civic-service, professional-service, and scholarly-service. KSU-officials have already conceded that Tiwari's professional-service and scholarly-service are "meritorious and of remarkable proportion." The court records will indicate that Tiwari's campus-service and civic service [through opposition to anti-Semitism and Apartheid, thus constantly protecting the KSU interest against lawsuits] are at a level far superior to anti-Semitic/discriminators, KSU-officials. This Case provides a rare window to the Justices of the Supreme Court to see how pervasive and widespread anti-Semitism and prejudices continue to exist in academia and the judicial system in Georgia. Should this Supreme court condone and simply overlook such constitutionally forbidden acts in this day and age?

Intra-Circuit, Inter-Circuit, federal-state Courts Discrepancies in decisions with regard to professors' cases:

For petitioner Tiwari, the lower court has claimed that it is a professor-case and hence court is not competent to judge discrimination simply because academic world is to complex to be put on trial for discrimination in front of a jury of laypersons. However, the lower court's opinion is biased against petitioner Tiwari, in that, (1) it is in a glowing contradiction with its own judgment (same 11th circuit and same district court) granting relief to White-professors (Kemp, Kaspers, Koch, Katz, Palmer, Levingston, and numerous others but exclusively white-professors) who sued BOR/KSU, (2) it is in a glowing contradiction with the judgments of other circuits where white-professors have been granted relief. (3) It is in a glowing contradiction with the judgments of various State-courts, where white Plaintiffs have been granted relief.

Professor McNier (Caucasian) was denied tenure, and he sued the University for reverse-discrimination. Here is an example of a tenure-related case, where the judge granted Prof. McNier to present his case to the Jury, and he won the case at a grand scale. (see: Howard E. McNier v. Trustees of California State University (San Francisco State University) Case No: 986713 Superior court of San Francisco Cty. (Friday, March 26,1999); Separately, McNier is also suing in the federal court too.

Professor Garman (Caucasian) won reverse race-discrimination) and breach of employment contract against Fist University (see. Garmon v. Fisk University, et al., No. 01-A-01-9803-CH-00132, Court of Appeals of Tenn, 1999)

First Amendment protects professor's allegations against University officials of impropriety: see Cotter v. Board of Trustees (University of Northern Colorado), WL 856876; Colo, App, Dec. 10, 1998

State University of New York Not Immune from Professor's lawsuit: see Anderson v. State University of New York, colege at New Platz, No. 98-7025 (2d cir, 1999)

A Glowing example of Court Prejudice: Court used one standard for Jane Kemp (White) and another for Tiwari:
Jane Kemp (white) who had no publications and was fired from a research-oriented school (UGA), yet court found in her favor; while

in the case of petitioner Tiwari, who has more publications (both in quality and quantity) than all of the Caucasians combined together and that too at a Non-research-school (KSU), the prejudiced Magistrate is inventing an issue of "publications" to dismiss the case, contrary to the established court records. A glowing example of how the lower Court was prejudiced against Tiwari. Even in the case of a research-oriented school, UGA, the lower court in Atlanta found in favor of Professor Jane Kemp (UGA) who had been illegally fired from her job, the lower court rejected the attorney-general's argument that she had no publications that's why she was fired. (651 F. Supp. 495; 1986 U.S. district; civil-action C83-330A)). While the same district court, in case of Petitioner Tiwari, is making a frivolous issue of "publications," notwithstanding that KSU is a teaching-oriented school where "scholarship is not limited to publication," and the records indicate that Tiwari's scholarship is far superior to that of all the Caucasians combined together.

Pre-Meditated Retaliation is Worse than Instant-Retaliation of Passion: contrary to the Prejudicial Opinion of the Court Below

Contrary to court's opinion, the Respondents cannot be granted relief on any of their retaliatory actions against Tiwari since 1992, under the principle of continuing violation for which there is bad-faith motive on the part of the Respondents. A pre-meditated retaliation bears a greater liability that an out-of-passion instant-retaliation. Federal laws clearly recognize the distinction between "opposition" and "retaliation." In 1991-92, Tiwari "opposed" the unlawful acts, while Respondents reacted through pre-meditated gradual "retaliation" throughout the period.

Petitioner Tiwari is a victim of pre-meditated gradual-retaliation since his initial opposition to anti-Semitism and unlawful unemployment practices. Tiwari lodged complaint only internally and did not go to EEOC back in 1992 in good faith for the stability of the campus-environment, and he continued to grant more time to Respondents for them to cool down and stop retaliation.[2]

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[2] Respondents had already smeared the name of KSU through their anti-Semitic acts against Katz and other Jews throughout the community; and subsequently other Jews (Kaspers, Levingston, Koch, Palmer, Schwartz, ...). Petitioner Tiwari did not want it to be further smeared through his complaint.

Respondents, instead, engaged in methodical, gradual, and pre-meditated retaliation against petitioner. Respondents adopted a multi-pronged strategy to decrease Tiwari's research-teaching-service productivity in which the petitioner had excelled (highest rating) year after year (per university records). Respondents also began to insert bad annual-reviews concealing Tiwari's outstanding contributions, while emulating exclusively the grossly less-qualified Caucasians. Arguendo, even if the alleged-deficiency of internal-service were to be true (which it is not!), the Respondents should be held liable for attempting to decrease Tiwari's productivity (in which he had excelled year after year) and causing irreparable damage to his stature and the education of the students.

Should intra-race discrimination be considered just as injurious and as damaging as the inter-race discrimination, particularly when an intra-race discrimination takes place when a salary-dependent and monetarily-bribed Black-employee collaborates with whites to perpetuate discrimination; or, when a Jew collaborates with whites in a conspiracy to inflict discrimination-injury against other Jews/petitioner. Ironically, the Black-collaborator (Gilliam) and Jewish-collaborators (Mescon, Schlact) had themselves complained of discrimination. An impartial judge cannot believe in these collaborator's testimony – a jury must test their muster. Same-group harassment and discrimination is actionable under Title VII, as ruled by the supreme court. Oncale v. Sundowner offshore, Inc., et al.; spreme court, No. 96—568.; Decided March 4, 1998

Every Segment of Judge's Order is Incorrect and Contrary to the Court Records: hence a review be granted

1. **Internal-Service: Contrary to Magistrate/Judge's prejudicial judgment and KSU-AG-agents' fraudulent-statements to the federal court, Plaintiff's internal-service records are superior to Caucasians** per ksu-manual (contrary to Judge's erroneous ruling and fraudulent statements of defendants):
: Making an erroneously incorrect judgment, the Judge (appendix

A3-A19) claims: "...plaintiff was not fulfilling his internal service obligations ...plaintiff was not serving on any committees and, except for advising students, his participation in internal service appears to have ended in 1991." This is an incorrect judgment. All parents and justices of the supreme court know that advising, guiding, and nurturing their children on campuses is an internal-service of the highest kind. The justices of the supreme court know that opposition to anti-Semitism is an internal-service and practices of anti-Semitism is a disservice. Plaintiff has actively participated in the internal-service of all kinds. Plaintiff has provided the internal-service at a level far greater than Caucasians in each and every sense of the KSU-guidelines for internal-service. Moreover, Students are the primary responsibility of a teacher and student-advising service (conceded by the district court judge) to be the primary and utmost responsibility. Plaintiff witnessed the anti-Semitic and apartheid nature of the committees which he vigorously opposed and protested to KSU-officials but of no avail; through these complaints plaiantiff tried to guard the interest of KSU against potential lawsuits by the victims of anti-Semitism and apartheid. Finally, when plaintiff witnessed anti-Semitism and apartheid reaching its zenith, he had no choice but to distance himself from such anti-Semitic committees. Only the jury can can judge: Who has provided a greater level of internal-service, Plaintiff who opposed anti-Semitism or the KSU-officials who have continuously practiced anti-Semitism and apartheid. Are not the anti-Semitic acts a disservice to humanity and KSU? (court-record in Plaintiff's depositions at paragraphs #79, 246-250, 244,245). A long list of internal-service items was provided to Defendants' counsel (Becky Miller, AAG) during interrogatories, and, can be retrieved by way of reference from court-record in Plaintiff's depositions at paragraphs #95, 143, 233. By way of reference in Plaintiff's deposition, those internal-service items (which Becky Miller concealed from the court) are to be considered a part of the court-record.

Exercising the free-speech and respecting the public-trust vested in Plaintiff Tiwari, it is the utmost duty of Tiwari to distance himself from anti-Semitic prejudicial multi-level committee-processes (in hiring, promotion, tenure) that conspired to deny Chairmanship to outstanding Brotman (Jew) and terminate the employment of Reibman (Jew) in favor of a grossly less qualified Caucasian (Tutterow). As always Tiwari will continue to oppose such blatant acts of anti-Semitism in the hiring-promotion-tenure processes; it is the civic-service of Tiwari to KSU-institution and to

taxpayers to distance from such anti-Semitic multi-level processes. KSU-agents can not conscript Tiwari to play along with them in holocating the careers of highly-qualified well-respected Jews (Brotman, Reibman). Fuehrer had used such schemes, design, and multi-level processes to victimize Jews. Given the determination of KSU-officials to continue to engage in discriminatory employment practices, Tiwari had to distance himself from such unethical recruitment-activities --- Tiwari decided to leave Caucasians alone and let them conduct their anti-Semitic committee-business in the manner they have chosen thus far.

Tiwari had to distance himself from anti-Semitic committees upon learning their anti-Semitic selection processes, as is evidenced through chair-denial to Brotman (Jew), job-termination of Reibman (Jew), tenure denial to Gilliam (Black) and Park (Oriental), and job-termination of a tenured-Asian, Micha Chan (Oriental). Tiwari had to further distance himself from anti-Semitic committees, after listening to Kaspers and Gilliam. Kaspers, a former KSU-official, complained that "Jews have been underrepresented and the victim of religious discrimination and a hostile, anti-Semitic environment on the KSC campus," Kaspers was unlawfully retaliated and her employment terminated for her opposition of anti-Semitism. Gilliam (Black) complained to KSU-president: "I have decided to write to you in order to bring you abreast of the racially motivated negative acts that minorities are confronted with at Kennesaw College." Tiwari had to distance himself from anti-Semitic committees, since Tiwari was fully convinced that Tiwari's support for well-qualified Jews/minorities goes against the wishes of anti-Semitic KSU-agents who had begun to accelerate the pace of retaliation against Tiwari. Tiwari had to distance himself from anti-Semitic committees upon learning that Gilliam (Black) and Park (Oriental) were denied tenure, while grossly unqualified Ingram and Tutterow had been granted tenure with no publications. Tiwari had to distance himself from anti-Semitic committees upon observing that gross-deficiencies of Caucasians were being covered up with glowing support letters written by KSU-agents, while glowing-accomplishments of Tiwari and Jews were being derided and downplayed.

District Judge's' erroneous judgment was based upon false and fraudulent statements made by defendants and the KSU-AG-officials which are in stark contradiction with the defendants' own published internal-service definition guidelines, policies, procedures, and ksu-manual (these contradiction are a part of the

court records). (1) Defendants have admitted that Plaintiff has provided the above-expectations service (the highest-rating) throughout his employment period, 1988-95. (2) Defendants have falsely claimed that "committee work" is the sole criterion for fulfilling service requirement. Yet, service is not limited to "committee," it is only a tiny segment; per KSU-manual: "Evidence of service includes, but is not limited to, the following sources: committees, development of programs, teaching of non-academic-credit courses, teaching of non-academic-credit courses, advisement of undergraduate and graduate students, Support student activities...in student organization, participation in recruitment, volunteer work, judging contests, consulting,..." (3) Moreover, service can be internal "OR" external as is clearly laid out in Rugg's own statement in KSU-manual, "Notable service for some will occur at the department and school levels and for others it will involve campus-wide activities **"OR"** civic and professional groups." (4) KSU has given full-professorship (exclusively only) to Caucasians who had provided NO-service, through a backdoor "Whites only" policy (4) Plaintiff has provided an outstanding "internal-service" in guarding the interest of KSU through his support for well-qualified Jews anti-Semitism (Brotman (Jew), Reibman (Jew), Katz (Jew). In contrast, KSU-officials have done disservice to KSU-institution by engaging in unlawful retaliation-discrimination against Candace Kaspers, Palmer (Jew), Koch (Jew), Schwartz (Jew), and Levingston (Jew). that entailed an unprecedented and unwarranted monetary costs to KSU.

Contrary to established records and published guidelines, District Judge made errors by accepting False and Fraudulent statements of Defendnats: KSU-AG-agents have made fraudulent-statements to the federal court with an intent to defraud the judicial process to obtain "summary judgment." KSU-AG-agents have made fraudulent-statements deriding Plaintiff's contribution to KSU, and they have made fraudulent-statements to cover up the gross-deficiencies of Caucasians. KSU-AG-agents have falsely stated that "Plaintiff failed to publish any refereed articles between ...1988 and 1992;" that publication is the sole criterion to fulfill "scholarship" requirement; that "quality of publication" is a requirement; that "committee work" is the only criterion to fulfill service requirement; that Brotman has Ph.D. in finance; that Miller

was a full-professor before coming to KSU, and that all Caucasians promoted to full-professor are "superior" to Plaintiff. In retaliation, KSU-AG-agents have incorrectly claimed to the effect that all full-professor Caucasians have superior qualifications to Plaintiff, and that all full-professor Caucasians deserved to achieve the rank of full-professor, while Plaintiff does not. Gross deficiencies of Caucasians (in teaching, scholarship, service) are covered up with unqualified glowing support-letters of their brethren (KSU-agents), while Plaintiff's glowing accomplishments are derided and downplayed with fabricated-deficiencies by retaliating KSU-agents. Caucasians whose gross-deficiencies have been covered up include, Curley, Moore, Sawyers, Schlact, Stivers, Hall, Rugg, Henssler, Brotman, Kochman, Miller, etc.. The experts-witnesses drawn from AACSB and SAC will help the Court compare Plaintiff's accomplishments with those of grossly less-qualified Caucasians to determine the level of retaliation-discrimination against Plaintiff. The retaliatory-statements of KSU-AG-agents are false both factually and procedurally.

2. On "scholarship" Magistrate/Judge made prejudicial judgment based on fraudulent statements of defendants which are contrary to the established records: Within the purview of the KSU-manual definition of scholarship, Plaintiff Tiwari's "scholarship" is at a level far greater than that of all the Caucasians combined together (combined scholarships of the 15-member department including Henssler, Curely, Brotman, Kochman, Miller, ... and others). Defendants have conceded through their own exhibits to the court that per KSU-manual that "scholarship at Kennesaw is broadly defined: it is not limited to publications. ... Scholarly productivity may may also be demonstrated in other ways such as presenting papers at professional meetings; practicing one's discipline through performance or consulting; staying current in one's field through reading; research, and attendnace at conferences; holding leadership positions in professional organizations and actively engaging in the programs and meetings of professional organizations.

In order of research or teaching priorities, University system of Georgia is classified into four categories: research-oriented universities (UGA, GSU), regional universities (Georgia Southern), teaching-oriented senior colleges (KSU), and 2-year colleges. KSU is a small teaching-institution in the third category and is not likely to be upgraded to the research-oriented Ph.D.-granting status for another century.

KSU is a small teaching institution where "scholarship is not limited to publication" let alone ever be raised an issue of the "quality of journals.' Tiwari has published in the 8th rank finance journal and has more publications in the quality journals than all of the Caucasians (per 1992 Finance Literature Index). None of the Caucasians (Kochman, Brotman, Henssler, Curely) has published in any known journal in finance, yet Caucasians were never subjected to "quality of the journal" demand. In struggling to fabricate a `case against Tiwari on "quality-journal" issue, defendants have given classic evidence of retaliation.

According to 1992 *Finance Literature Index*, Dr. Tiwari has more publications in finance than all the full-professors of finance, yet Dr. Tiwari was denied professorship in 1992. According to this *Index*, Henssler had no-publication, Curley had only one-third of a publication to his credit, Brotman had only one-half of a comment, Kochman had only one financial-education piece, Miller had only 1½ papers to his credit, and others had no publication. Dr. Tiwari had more publications than all of these Caucasians, yet he was denied professorship in 1992.

Per this *Index*, Dr. Tiwari has 31 pages of contribution (far greater than any Caucasian) and yet Dr. Tiwari has been denied professorship. Per this *Index*, one of Tiwari's articles bears KSU's name as his affiliation. (Showing KSU as Tiwari's affiliation has brought name and fame to KSU-institution).

Per this *Index*, Henssler has no publications and no contribution to the finance literature.

Per this *Index*, *Brotman* has only 1½ page of contribution to the finance literature. Brotman's only cited work in the *Index* is not a real full-fledged article but it is only a 3-page comment. Even this short comment is co-authored such that she gets a credit of only 1½ page. Furthermore, this "comment" publication does not even bear the KSU's name as her affiliation

Per this *Index*, Curley has only 2-pages of contribution to the finance literature. Curley has only one-third of a paper to his credit during his entire professional career according to the *Finance Literature Index*. This triple-authored paper is only 6-pages in length, and thus Per this *Index*, Curley has only 2-pages of contribution to the finance literature during his entire professional career. (This paper was co-authored with a GSU Indian-born professor and it did not bring the name and fame to KSU.)

Per this *Index*, Kochman has only 4 pages of contribution to the finance-literature and that too a financial-education rather than an academic research article. Furthermore, Kochman's

publication do not even bear the KSU's name as his affiliation (so KSU does not get any credit for this publication).

Per this *Index*, Miller had only 22 pages of contribution (co-author adjusted) to the finance-literature when he was given full-professorship. Furthermore, Miller's publications do not even bear the KSU's name as his affiliation (so KSU does not get any credit for this publication; it did not bring any name and fame to KSU).

Contrary to Magistrate/Judge's erroneous judgment and KSU-AG-agents' fraudulent-statements to the federal court:

1. Tiwari has numerous refereed-publications during 1988-92
2. Brotman does NOT have terminal degree in finance
3. Tom Miller has never been full-Professor before coming to KSU,
4. Plaintiff attended the 1991-PAC meeting in person
5. Plaintiff made an outstanding contribution to the 1997-recruitment committee by casting his sole support for Reibman (Jew) and other minorities against the wishes of KSU-agents
6. Gross deficiencies of Caucasians (in teaching, scholarship, service) are covered up with unqualified glowing support-letters of their brethren (KSU-agents), while Plaintiff's glowing accomplishments are derided and downplayed with fabricated-deficiencies by retaliating KSU-agents.

3. Contrary to Judge's erroneous and incorrect claims which was based on false and fraudulent statements of defendants, the PAC-1994 was very much the same as PAC-1992:

1992-PAC: Goodwin, Gilliam, Bumgarner, Sabbarese, Kochman, Anderson, Henssler

1994-PAC: Goodwin, Gilliam, Bumgarner, Sabbarese, Kochman, Park

In 1994-PAC, Mr. Park (the only different person and a long-time personal friend of the Chair) was the only different person who was used by retaliating Chair and Dean against Plaintiff through monetary incentives (court-record in Plaintiff's depositions at paragraphs #251-257). Moreover, the promotion criterion per KSU-manual has remained unchanged during all the promotion periods, so it does not matter who is in the committee, these members are supposed to be guided with objectivity.). Kenneth P.

Gilliam (Black) who served as Chair-SBA-PAC-1992/93 and Chair-KSC-PAC-1995/96 himself raised concerns about the presence of discrimination in the process of promotion and tenure in 1987, when Gilliam (Black) was denied tenure. ("I have decided to write to you in order to bring you abreast of the racially motivated negative acts that minorities are confronted with at Kennesaw College." (letter dated February 6, 1987 from Kenneth P. Gilliam (Black) to Dr. Betty L. Siegel, KSU-President). Paradoxically, KSU-agents have presented the same Gilliam (Black), a salary-dependent employee of theirs, as a witness who now claims that there is no discrimination. Therefore, the court must deny any relief to defendants under their preferred proffered-cover of "multi-level" process, since the Chair of such committees [Gilliam (Black)] himself has been on the record claiming the presence racial discrimination on the KSU campus. The court should neither believe KSU-agents nor their salary-dependent employee [Gilliam (Black)].

4. <u>The seven-step review system is a sham</u> and it consisted by only retaliators along with their salary dependent employees who were used as instruments to retaliate against Plaintiff: Could Nazis have been granted relief at Nuremberg because Nazis had their deeds approved by all the "multi-level," committees? Contrary to Judge's erroneous and incorrect ruling (which was based on false and fraudulent statements of defendants), At KSU, the seven-step pretext is a "sham" operation. 4 of the 7-steps wholly consists of retaliating KSU-officials; the remaining 3 steps wholly consists of the subordinates of retaliating KSU-officials to whom these subordinates owe their jobs, salary, and promotion; 50% of SBA-PAC consists of subordinates appointed by retaliating Dean; 50% of KSC-PAC consists of KSU-administrators; KSU-officials have improperly intervened in the department-PAC. Defendants must be denied any relief under the cover of "multi-level" committees (or rubber-stamping processes) which works at the behest of retaliating KSU-administrators. Could Nazis have been granted relief at Nuremberg because Nazis had their deeds approved by all the "multi-level," committees?

4 of the 7 committees (retaliating Chair, Dean, and VP, P,) were one-man committees <u>to whom Tiwari had complained of discrimination and who were retaliating against Tiwari and hence their decision on his promotion is null and void.</u>

The 5th committee, University-PAC, had more than 50% administrators (Deans) who were biased against Tiwari, because Tiwari had complained of discrimination to administrators (the rest 50% consisting of faculty were salary-dependent on administrators

and they had everything to gain from voting against Tiwari). Since over 50% of the KSC-wide PAC consists of KSU-administrators, and the rest consist of the regular faculty who cannot afford to go against the wishes of the KSU-officials who make decisions about their annual-salary raises.

The 6th committee, CBA-PAC, has 50% of its members who were appointed by the Dean and who were dancing at the tune of their master Mescon, who was retaliating against Tiwari. Since 50% of the SBA-PAC members are hand-picked by Dean Mescon who are the staunchest supporter of Mescon and who will do anything to please him; the rest 50% of the PAC members are salary-dependent on administrators and are the mercy of the Dean and Chair for their annual salary-raises.

The 7th committee department-PAC members are salary-dependent on Chair-Dean-VP-P and these PAC-members had already been bribed/tainted by Chair/Dean through monetary incentives: by sending a memo that "we will benefit from not having to support promotions," by granting appreciation-awards, higher pay-raises (Ingram got $7,000 raise + part time job to her husband), and promotion (Tutterow had been promised Chair's position). Department-PAC consists of individuals with Ph.D. in Tiwari's field of expertise; these PAC-members had unanimously and strongly recommended Tiwari for promotion in 1992. But after the active campaigning by Dean and Chair against Tiwari's promotion, these department-PAC members decided to act on the wishes of Dean and Chair and deny Tiwari a promotion in 1994 and 1995. The majority of the department-PAC during all the three promotion processes consisted of the same very individuals who unanimously and strongly recommended Tiwari's promotion in 1992, but after the retaliatory and unlawful interference by the Dean and Chair, these PAC members denied promotion by concocting "pretextual" grounds; notwithstanding that Tiwari had performed even at a higher level than that in 1992 when Tiwari had been approved unanimously and strongly. (the promotion criterion per KSU-manual has remained unchanged during all the promotion periods.).

Unlike a large research-oriented university such as UGA, where PAC-members are highly accomplished individuals who cannot be easily manipulated by the retaliating administrators, KSU is a small community school (with inactive faculty), where it is so easy for the retaliating Dean, Chair, and VP to manipulate and intimidate PAC-members to vote against Tiwari. The so-called

seven-steps in the promotion process at KSU is indeed a sham-operation for the retaliating Chair, Dean, and VP to hide behind.
University officials should be treated as Corporate Officials for their wrong-doings: Business world is the same as academic Magistrate opines that KSU-officials are immune because they belong to academic-world (which according to Magistrate is different from business-world and political-world), but then he contradicts himself by claiming that VP Rugg's retaliatory letter is "Sound business advice cannot become the basis for a finding of retaliation" (page-50 of Magistrate's R&R) In this line, Magistrate Magistrate is simply defending his Caucasian-brethren by mixing business-advice of the business world with the academic-advice of the academic-world (so in the same sentence, per Magistrate business-world is the same as academic-world).

Contrary to the Decision Below Petitioner's Claims Are Not Barred by Applicable Statutes of Limitations.

The Doctrine of Continuing Violation Applies. The District Court erred in determining that certain of Petitioner 's claims are time-barred. The District Court held that Petitioner 's Title VII claims arising from the denial of his promotion to full professor in 1992 and in 1994 are time-barred. R5-45-11. The District Court further held that Petitioner 's claims for compensatory damages under § 1981 and § 1983 for the denial of his promotion in 1992 are time-barred, while his claims for injunctive relief remained viable. R5-45-12-13.

The District Court's holding was erroneous, because the evidence here shows a continuing systemic violation of both Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 and 42 U.S.C. §§ 1981 and 1983. Petitioner has shown that he has been systematically discriminated against and treated differently in the terms and conditions of his employment with Defendants. Furthermore and most importantly, where a Petitioner has alleged a continuing violation under § 1983 and Title VII, the determination of whether it has been proved and the appropriate statute of limitations is a matter for jury determination. Calloway v. Partners Health Plus, 986 F.2d 446, 448 (11th Cir. 1993).

Without question the defendants have maintained an ongoing and systemic policy of discrimination and retaliation against Petitioner which continues to this date. On three separate occasions,

the defendants have found a pretextual reason for denying Petitioner a promotion while promoting grossly less-qualified others. Under the applicable case law, the statute of limitations, both for Petitioner 's claims under Title VII and under 42 U.S.C. 1983, would not even begin to run until the policy is discontinued. Beavers v. American Cast Iron Pipe Co., 975 F.2d 792, 796-98 (11th Cir. 1992); Calloway, supra, at 448. "In determining whether a discriminatory employment practice constitutes a continuing violation, this Circuit distinguishes between `the present consequence of a one-time violation and continuation of the violation into the present.'" Calloway, 986 F.2d at 448 (quoting Beavers 975 F.2d at 796). In the instant case, Petitioner is complaining of ongoing salary discrimination, which exists to date and a policy and practice of discrimination with regard to promotion, which exists to the present. The policy is still in effect, and until the policy is discontinued, the statute of limitations is simply not an issue. Therefore, the District Court erred in granting Defendants' motion for summary judgment on this basis.

Petitioner 's Claims under 42 U.S.C. 1981 Are Subject to a Four Year Statute of Limitations. Under 28 U.S.C. 1968, which was enacted in 1990, "a civil action arising under an Act of Congress enacted after the date of enactment of this section may not be commenced later than 4 years after the cause of action occurs." As the Civil Rights Act was amended by Congress in 1991 to add provisions including 42 U.S.C. 1981(a) & (b), it follows that Petitioner 's right of action against Defendants pursuant to that statute carries now a four-year statute of limitations.

Furthermore, the analysis of whether or not Defendants' conduct constituted a continuing violation of Petitioner 's constitutional right to be free from race discrimination pursuant to 42 U.S.C. 1981 or 1983 is exactly the same as that under Title VII. See e.g., Muniz-Cabrero v. Ruiz, 23 F.3d 607 (1st Cir. 1994); Stallworth v. Shuler, 777 F.2d 1431, 1435 (11th Cir. 1985).

In regard to Petitioner 's claims pursuant to 42 U.S.C. 1983, "[t]he acts alleged in Petitioner 's complaint are continuing in nature and, therefore, the statute of limitation defense [to a 1983 claim] is not valid." Kilgo v. Dept. of Corrections, 202 Ga. App. 50, 413 S.E.2d 107 (1991). See also Stallworth, supra at 1435. What must be proved, directly or circumstantially, is that a governing body has worked constitutional deprivation of a citizen pursuant to an impermissible or corrupt policy which is intentional and deliberate."

Kilgo, supra, citing City of Cave Spring v. Mason, 252 Ga. 3, 310 S.E.2d 892 (1984).

The court Should Grant Review Now to Protect the Common people from Prejudicial Judicial Process: The court below made a prejudicial affirmation/ruling; therefore, based upon the court records a review should be granted to right the wrong by reversing the judgment for the aforementioned prejudices of the Magistrate and that also include the following grounds that have been raised with the court below:

A. The Judgment Should Be Reversed Because The District Court Erroneously Adopted the Complete Fact Statement of the Magistrate Judge.

B. The Judgment Should be Reversed Because The District Court Imposed an Improper Burden on Plaintiff at the Summary Judgement Stage.

C. The Judgment Should be Reversed Because Plaintiff Had Sufficient Proof of Pretext to Raise a Jury Issue.

1. Defendants' Failure to Apply Kennesaw State University's Guidelines For Promotion Is Evidence of Pretext
2. Inconsistent Statements By Defendants Constitute Evidence of Pretext
3. Inconsistencies In Promotions of Other Caucasians Are Evidence of Pretext

D. The Judgment Should be Reversed Because Plaintiff Had Sufficient Proof of Retaliation to Raise a Jury Issue.

E. The Judgment Should be Reversed Because Plaintiff's Claims Are Not Barred by Applicable Statutes of Limitations.

1. Doctrine of Continuing Violation Applies.
2. Plaintiff's Claims under 42 U.S.C. § 1981 Are Subject to a Four Year Statute of Limitations.

F. The Judgment Should be Reversed Because Plaintiff Had Sufficient Proof of Discriminatory Compensation to Raise a Jury Issue.

G. The Judgment Should be Reversed Because Plaintiff Had Sufficient Proof of Claims Against the

Individual Defendants in Their Individual Capacities to Raise a Jury Issue.

I. The Judgment Should be Reversed Because Plaintiff's ADEA Claims Are Not Barred by the Eleventh Amendment.

The Review should be Granted

Should this court exercise its supervisory power and open the door for Petitioner Tiwari for a hearing, for the court below closed its door on him, *de-facto,* waving a sign that the judicial system is meant for our-kind-of people only "for-us, by us, and of-us;" The court below indicates Caucasian-professor-litigants (Kaspers, Kemp, Levingston, Palmer, Koch, Katz) will advance their cases to the Jury of American Public, but others are barred by its discretion. This court has continuously overruled the prejudicial decisions of the lower court as is evidenced through the following cases

The Judicial discrimination has not been condoned by the supreme court: Campbell v. Louisiana; supreme court No. 96—1584. Decided April 21, 1998

Discrimination is not condoned by the supreme court: Rosenberger et al. V. Rector and visitors of university of virginiA et al.; supreme court case; No. 94-329. Decided June 29, 1995

Discrimination is not condoned by the supreme court Ort gratiot sanitary landfill, inc. V. Michigan department of naturalresources; supreme court case; No. 91-636. Argued March 30, 1992 -- Decided June 1, 1992

In employment-cases, should universities enjoy any special immunity or greater deferral in the light of the fact that this supreme court did not grant immunity to even the president of the U.S., Mr. Clinton in Paula Jones case (supreme court, 95-1853). Should University-employment-discrimination cases be considered different from Corporate-employment-discrimination cases, if not then this court should grant certiorari. Should this court condone apartheid in judicial decisions of the South: one decision for Caucasian-professor-plaintiffs, while another for others. Justice Cardozo "it will not do to decide the same question one way between one set of litigants [Caucasian-professors] and the opposite way between another [Jews, petitioner Tiwari]."

Should title-VII plaintiffs be required a greater burden of proof than non-title-VII plaintiffs to advance their cases to the jury of peers. Injury is an injury under any law violation; whether respondents inflict injury violating plaintiff's civil rights under title-VII or they inflict injury violating any other laws (contract violation, defamation, slander, libel). Law breakers (respondents) must be held accountable for even under title-VII cases. Should Caucasian-professors receive a preferential-treatment in the reverse-employment-discrimination cases than other-professors, if not then this court should grant certiorari. Should this court intervene and grant certiorari to remove the intra-circuit, inter-circuit, state-federal, differentials in Title-VII cases. If this court grants a hearing, the court documents will prove that the lower court entered a prejudiced incorrect judgment against Petitioner Tiwari, using one standard for white-professor-litigants (Kemp, Kasper, Katz, Koch, Levingston, Palmer) and another for Petitioner Tiwari.

When a federal Magistrate writes a prejudiced opinion knowingly establishing "false" as "truth" and "truth" as "false," which are contrary to court records, then it is one those rare occasions where this supreme court must intervene and grant certiorari.

The supreme court must not let the perjury and falsifications by state public officials of Georgia, (including its attorney general) be established as truth without proper scrutiny by the Jury, lest history casts doubt on the sanctity of our Judicial system whose sole purpose is to establish justice, truth, fairness, and equality. The supreme court has the duty to right the wrong.

The petitioner requests that this court must not grant state-officials any "special-protection" relative to private-employers against their legal liabilities for their anti-Semitic-segregationist actions. The state-officials must compete with private-employers on an equal footing for their legal liabilities-assets. On the contrary, the state-officials must be held to a higher standards by virtue of their being public-officials in charge of public's interest, whereas a private-employer may be excused in the interest of his self-interest.

When anti-Semitic-segregationist actions (to exclude superiorly-qualified Jews and Petitioner in employment, rank, salary) of state public officials from the deep-South still continue to challenge the very foundation of the university-education for our nation's children (future of our country), the Justices of the supreme court have the duty to intervene, particularly when such actions are

simply condoned, affirmed, and signed off by Atlanta federal courts without proper due investigation by the Jury of peers. This court must decide whether our nation's children must be denied the opportunity to benefit from superiorly-qualified Jews/petitioner through exclusivity in favor of the mainstream. When the education of the taxpayers' children is adversely affected by the anti-Semitic/retaliatory practices of the Respondents, this court has the duty to intervene and right the wrong. Every incorrect prejudicial decision can be reviewed and reversed for the sake of better education for taxpayers' children. Academia and education is a noble profession and it must not be let to be diminished by the anti-Semitic-segregationist actions (to exclude superiorly-qualified Jews and Petitioner in employment, rank, salary) of state public officials.

CONCLUSION

To protect the rights of the common citizens, this supreme court has continually granted a hearing when a gross mis-justice has been carried by the state-officials and lower courts The supreme court hears argument not only for inter-circuit and intra-circuit differentials, but also for the overall gross mis-justices and prejudices of state-officials and lower courts. Petitioner believes that the supreme court is an institution that is far above the human biases, prejudices, anti-Semitism, and apartheid. The supreme court does not affirm segregationist apartheid-era justice. This supreme court does not recognize the anti-Semitic apartheid-styled employment practices by state universities in the deep-south, Georgia. The supreme court does not affirm or condone anti-Semitic-styled prejudiced decisions of Respondents. Petitioner (pro-se) seeks permission of this court to present his case to the justices against the state-officials of the deep-south, Georgia. Petitioner requests that his Petition for Writ of Certiorari be granted.

Respectfully submitted, August 16, 1999

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Appendix

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-9274

D. C. Docket No. 1:97-CV-652-ODE

KASHI NATH TIWARI,
Plaintiff-Appelant

versus

BOARD OF REGENTS OF THE UNIVERSITY System of Georgia , Kennesaw State University, ET AL.,
Defendants-Appellees

Appeal from the United States District Court for the Northern District of Georgia

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(April 22, 1999)

Before BARKETT, Circuit Judge, KRAVITCH and MAGILL*, Senior Circuit Judges

PER CURIAM:

Appellant Kashi Nath Tiwari appeals from the district court's grant of summary judgment to the Board of Regents on Tiwari's claim that he was denied a promotion based on race in violation of federal civil rights laws. Tiwari argues that he introduced sufficient evidence of pretext to preclude summary judgment. We affirm.

*Honorable Frank J. Magill, Senior U.S. Circuit Judge for the Eighth Circuit, sitting by designation.

In Combs v. Plantation Patterns, 106 F.3d 1519 (11th Cir. 1997), we held that "a plaintiff is entitled to survive ... [summary judgment], if there is sufficient evidence to demonstrate the existence of a genuine issue of fact as to the truth of each of the employer's proffered reasons for its challenged action. Id at 1529. The district court, however, appears to have required a greater showing, requiring a Title VII plaintiff to show that both falsity of the employer's proffered reason and that the true reason was discrimination. This is contrary to Combs. In Combs, we emphasized that a plaintiff is not required to put on evidence beyond its prima facie case and the falsity of the employer's proffered reasons. "[A] prima facie case plus evidence permitting disbelief of the employer's proffered reasons equals the plaintiff's entitlement to have the factfinder decide the ultimate issue of discrimination." Id at 1532.

Although the district court, it appears, did not apply the correct standard, our review is de novo and we may apply Combs here. Accordingly, we must determine, viewing all of the evidence, whether Tiwari "has cast sufficient doubt on (the city's] proffered nondiscriminatory reasons to permit a reasonable fact finder to conclude lhat the employer's proffered 'legitimate ressons; were not what actually motivated its conduct.'" Id. at 1538 (quoting Cooper - Houston v. Southern Ry, Co 37 F.3d 603, 605 (11th Cir., 1994). Having reviewed the. record in this case, we conclude that Tiwari has not introduced sufficient evidence to permit a jury to conclude that the legitimate nondiscriminatory rationales proffered by the defendants were false.

Accordingly, the judgment of the district court is **AFFERMIED**.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
GEORGIA
ATLANTLA DIVISION

CIVIL ACTION
No. 1:97-CV-652-ODE

September 29, 1998

KASHI NATH TIWARI
Plaintiff

V.
THE BOARD OF REGENTS OF THE UNIVERSITY OF GEORGIA,
Michael D. Curley, individually and in his official capacity,
Roger C. Tutterow, individually and in his official capacity, and
Timothy S. Mescon, individually and in his official capacity,

Defendants.

ORDER

This civil action, in which **Plaintiff seeks** damages and injunctive relief pursuant to the Civil Rights Act of 1886, 42 U.S.C. §1981, an amended; 42 U.S.C.§1983; Title VII of the Civil Rights Act of 1964, as amended,, 42 U.S.C.§2000e -2000e-17 ("Title VII"); the Age Discrimination in Employment Act, as ad ("ADEA*) 0 29 U.S. C. SS 621-234, and Georgia lav, is before the court on the August 14, 1998 Report and Recommendation ("R&R) of Magistrate Judge C. Christopher Hagy ("Magistrate Judge"). In the RAR, the Magistrate Judge recommends granting summary judgment as to Counts I-VI and dismissing counts VII-IX. On August 28,, 1998, Plaintiff filed objections to the R&R before the court.

Since neither party filed objections to the statement of facts contained in the R&R, the court adapts those facts as set forth herein. Plaintiff is a dark-skinned Asian male born in India who is now a citizen of the United States. Plaintiff is an Associate Professor at the Michael J. Coles College of Business at

Kennesaw State University ("KSU"). He joined the KSU College of Business faculty in June 1988 and was granted tenure in 1992. Plaintiff applied for and was denied a promotion from the position of Associate Professor to full Professor on three separate occasions for the academic years, 1992-93, 1994-95, and 1995-96.

KSU has a seven-step review process in order to make tenure and promotion decisions. The application process consists of : 1) a review and recommidation with respect to a candidate's application for tenure or promotion by the Personnel Actions Committee (also known an the Promotion and Tenure Committee, hereinafter, "PAC") in each applicant's department, followed by similar reviews and recommendations by; 2) the Chair of the candidate's department; 3) the PAC for the College of Business; 4) the Dean of the College of Business; 5) the PAC for KSU; 6) the Vice-President for Academic Affairs at KSU; and 7) the President of KSU. Each committee, or individual's recommendations is made a part of the application and is passed to the next level. Each successive level of review can be influenced by the recommendations of prior reviewers; therefore, if a candidate does not have the support from any level of review,, it is less likely that the next level of review will support the application.

KSU has set out guidelinos as to what members of the faculty must do in order to be promoted to full Professor. A successful applicant must: 1) be an effective teacher; 2) have a terminal degree (Ph.D.);, 3) meet the requirements of "Professional Growth and Development"; and 4) meet the requirements for "Institutional Service." An -applicant must achieve a "notable" ranking in at least one of the last two areas of review,, that is,, "Professional Growth and Development" or "Institutional Service," and perform at a satisfactory level in the other area.[1]

Plaintiff has elected to pursue "Track C", that is, to pursue a notable ranking in the areas of Professional Growth and Development as opposed to Institutional Service.[2]

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[1] A "Notable* ranking has been defined a 'B' on a letter grading scale,, and is defined an a continuum of achievement as less than excellent,, exceptional, or outstanding, but more than average, good or acceptable.

[2] KSU permits its faculty to pursue various tracks toward promotion. Plaintiff follows "Track C" which allowed him to focus on teaching and Professional Growth.

"Institutional Service is defined as internal and external service to the institution. "External Institutitional Service" ("external service") is defined to include community and professional service activities,- while "internal Institutional Service" ("internal service") is defined to include community work,, student advisement and various administrative or support functions at the department, school, or college level. The Kennesaw State College Policy and procedures Faculty Handbook specifically states that: all fulltime faculty have, an obligation of internal institutional service.* (Defendants' Statement of Material Facts (40M"), Exhibit D-2].

In 1992, Plaintiff was recommended for promotion to full Professor by the PAC of his Department and by the Chair of his Department; however,, he was not recommended by the PAC of the College of Business or the Dean of the College of Business. The Dean noted two deficiencies in Plaintiff Is record: 1) the lack of publications of any refereed articles since Plaintiff joined the KSU faculty, which resulted in less than notable achievement in Professional Growth and development, and 2) a lack of Institutional Service. The Dean noted that there was:

> clearly ample room for (Plaintiff) to expand (his] commitment to the institution I am referring to more leadership than participation. These are the characteristics of faculty promoted from Associate Professor rank.

[DSMF Exhibit C-5].

In 1994,, Plaintiff again applied for promotion, however,, he was not recommended by his Department PAC because it was not convinced as to the quality of Plaintiff's publications, in spite of the fact that Plaintiff had published extensively since his failure to be promoted in 1992.[3] Moreover, the Department believed that Plaintiff was not fulfilling his internal service obligations. -In fact, at the time of his 1994 application for promotion, Plaintiff was not serving on any committees and, except for advising students, his

[3] The 1994 PAC was comprised of different individuals than that of the 1992 PAC.

participation in internal service appears to have ended in 1991. Plaintiff served as a faculty advisor to a sorority for two years prior to 1992, on a committee for a student leadership award in 1991, and on the College of Promotion and Tenure Committee in 1991. While Plaintiff's lack of internal service was noted by the Dean of the College of Business in 1992, it appears that Plaintiff did not address this deficiency at the "time* of his application for promotion in the fall of 1994, or at anytime thereafter. Plaintiff was not involved in any internal service other than advising students.

However, Plaintiff was involved in extensive external service. He participated in a variety of professional associations and achieved a leadership role in many of them. As a result, Plaintiff was found to be performing *above expectations" in institutional service in his annual reviews with all. comments in those evaluations relating to his external service.[4]

In 1994, after Plaintiff did not receive the Department recommendation, he wrote a letter to the Department Chair in which he attributed the Department PAC's decision to racial prejudice and the lack of objectivity. The Department Chair refused to support Plaintiff's application, expressing concern over Plaintiff's refusal to participate in internal service activities an well as Plaintiff's difficulties in getting along with others of the Department. The Department Chair further noted that Plaintiff was receiving very good teaching valuations and that he did not see Plaintiff's research, writing, or his external service as a problem. Rather, the issue for him was Plaintiff's lack of service to the institution. In an letter dated October 24, 1994, the Chair wrote to Plaintiff that:

> You have shown very little interest or support for the necessary work of the Department, The Coles School or the College.[5] You seemed to have defined your responsibility in a way to exclude these; not because we

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[4] The annual reviews are separate from the reviews for tenure and promotion. Defendant contends that the requirements for a positive annual review for an Associate Professor differs from the criteria for receiving a positive review for a promotion.

[5] The Coles School is the Michael J. Coles College of Business, and Kennesaw State is now a University.

> have not discussed this important aspect of your position but because you have chosen not to participate. This has been a continuing' and increasing problematic aspect of your association with various members of the Department, myself and other members of the Coles School. It is not satisfactory. You know it.

[DSMF, Exhibit B]

The Department Chair further noted that Plaintiff was isolating himself from the rest of the Department and was developing a strained relationship with other members of the Department. Upon receiving this letter, Plaintiff withdrew his 1994 application for promotion.

In the fall of 1995,, Plaintiff filed a third application for promotion. The Department, PAC, again, refused to recommend him because it felt that, while Plaintiff was satisfying his publishing requirements,, such that his work in the areas of teaching and Professional Growth and Development were considered "commendable and notable," he had still failed to participate in any internal service activities. The Department Chair agreed with the Department PACs assessment and in an October 30, 1993 memorandum to Plaintiff stated:

> That you have not initiated or sustained more effort in the area of institutional service, and the collegial, cooperative interaction embedded in institutional service, is a singular but critical area of concern.

[DSMF,, Exhibit B-5]. The School of Business, too, refused to Support Plaintiff's endeavor, finding that:

> In the area of institutional service, we believe that your performance does not meet expectations for the rank of Professor ... (t]here needs to be strong leadership contribution at the department, school and college levels....

[DSMF, Exhibit N-1].

All subsequent levels of review and ultimately the President of KSU, denied Plaintiff's request for promotion. Plaintiff filed a complaint of discrimination with the Equal Employment opportunity Commission ("EEOC") an April 10, 1996.[6] Within 90 days of receiving his Right to Sue letter, Plaintiff filed the instant action on March 12, 1996.

When a party files timely objections to a magistrate judge's recommended disposition of a dispositive matter, a district court must make a de novo determination as to any portion of the disposition to which the party objects. Fed. R. Civ. P. 72(b); 28 U.S.C.§636(b)(1)(B). As Defendants' notions for summary judgment are dispositive,, see 28 U.S. C.§63 6 (b) (1) (B) this court must review the objected-to portions of the August 28 report on a de novo basis.

Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ped.R.Civ.P. 56(c). In ruling on the movant' a motion, the court must view the evidence in a light most, favorable to the non-movant. Adickes v. S.H. Kress & Co.1 398 U.S. 144, 157 (1970) . To prevail on its motion for summary judgment, the movant must show that the evidence is insufficient to establish an essential element of the non-movant's case. Calotex Corp. V, Catratt, 477 U.S. 317, 325 (1986). If the movant makes a sufficient showing,, then the non-movant "must come forward with I specific facts showing that there is a genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting Fed-R.Civ.P. 56(e)). If the evidence supporting the non-movant's claims is insufficient for a jury to return a verdict for the non-movant, or is merely colorable" or "not significantly probative," then the movant is entitled to summary judgment. Anderson v. Libn= Lobby, Inc., 477-U.S. 242, 249 (1986). If, however, reasonable minds could differ as to the import of the evidence, and a reasonable interpretation of the

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[6] Defendant contends that Plaintiff filed his charge on April 12, 1996. However, there is no dispute that Plaintiff's charge and complaint are timely as to the 1995 promotion decision.

evidence could lead to a verdict for the non-movant,, then summary judgment is inappropriate. Id 251-52.

In his R&R. Magistrate Judge Hagy applied the standard for evaluating claims of discrimination, that was initially adopted by the Court in McDonnall Douglas CorR. v. Green,, 411 U.S. 792 (1973). Under this now-familiar framework,, if the plaintiff establishes a prima facie case of discrimination, the burden shifts to the defendant to produce evidence of "legitimate, nondiscriminatory reasons for the challenged employment action." Combs y. Plantation Patterns, 106 F.3d 1519,, 1528 (11th Cir. 1997) (citations omitted). Defendant's burden, however, is "exceedingly light," Perryman v. Johnson Products Co.,, 698 F.2d 1138, 1142 (11th Cir. 1983), and "once defendant states a legitimate reason, plaintiff- must show that defendant articulated reason is merely pretext and that defendant's true reason for discharging plaintiff was discrimination." Pollins v. Techsouth. Inc., 833 F.2d 1525, 1529 (11th Cir. 1997).

Here, Magistrate Judge Hagy found that Plaintiff established a prima facie case of discrimination, that Defendant satisfied its burden of offering a legitimate nondiscriminatory reason for the challenged action,, and that Plaintiff failed to present sufficient evidence regarding the issue of pretext. Thus based an these findings,, Magistrate Judge Hagy recommends granting Defendants' motion for summary Judgment as to all claims and further recommends that the court decline to exercise supplemental jurisdiction over Plaintiff's state law claims.

Before turning to Plaintiff Is objections, the court will address an objection raised by the Defendants in their response to Plaintiff's motion that all of Plaintiff's claims prior to ctions 1995 are time-barred.[7] In general,, in order to invoke Title VII's remedial machinery, a claimant must file a charge with the EEOC within 180 days after the occurrence of the alleged discriminatory act. 42 U.S.C.§2000e-5(e) (1).[8] This 180-day

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[7] The Magistrate Judge, having already found that Defendants' action for summary judgment should be granted, declined to address Defendants' statute of limitations concerns.

[8] The limitations period is extended to 300 days in cases where the claimant "has initially instituted proceedings with a state or local agency with authority to grant

period "begins to run from the time that the complainant knows or reasonably should known that the challeng" act has occurred." Stafford v. MIscogee County Board of Education, 688 F-2d 1383, 1387 (11t' Cir. 1982) (citation omitted). Plaintiff argues in his motion for summary judgment that the events prior to the 1995 denial of full Professor status are not time-barred because the alleged discriminatory practices constitute a continuing violation. The critical distinction in the continuing violation analysis, therefore,, is whether the Plaintiff complains of "'the present consequence of a one time violation, which does not extend the limitations period, [or] the continuation of that violation into the present, which does.'" Knight v. Columbus Ggraia, 19 F.3d 579, 580-81 (11th Cir. 1994) (citation omitted). Where a continuing violation is found, the Plaintiff can recover for any violations for which tho statute of limitations has not expired.

Plaintiff argues that he continues to suffer from ongoing salary' discrimination as well as "policy and practice tof discrimination] with regard to promotion,, which exists to the present.* (Plaintiff's Response to Defendant's Motion for Summary Judgment at 10]. However, "a claim arising out of an injury which is 'continuing' only because a putative plaintiff knowingly fails to seek relief is exactly the sort of claim that Congress intended to bar by the 180-day limitations period." Roberts v. Gadsden Memorial Hospital, 850 F.2d 1549 (11" Cir. 1988).

The court finds that each time Plaintiff was not promoted to full Professor constitutes a discrete act of alleged discrimination and do not amount to a continuing violation. Plaintiff's failure to file a charge of discrimination with the EEOC within the limitations period,

> is legally equivalent to a discriminatory act that occurred before the enactment of Title VII. Although such a past discriminatory act may continue to affect an employee's present pay and fringe benefits, such an effect does not constitute a continuing violation.

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or seek relief from such practice." 42 U.S.C.§2000e-5(e) (1). However, there is no evidence that Plaintiff undertook such actions.

Gonzalez v. Firestone T Rubber Co., 610 F.2d 241 (5th Cir.1980). It is clear from the record that Plaintiff believed that KSU illegally discriminated against him when it denied his 1992. promotion application on February 5, 1993. Additionally, Plaintiff states that when his 1994 application was not approved, he believed that he was illegally discriminated against as a result of his race as early as October 18, 1994. Therefore, as Plaintiff reasonably know that each challenged discriminatory act occurred,, the 180-day clock began to run, at the very least, from those respective dates. Accordingly, Plaintiff's Title VII claims arising from his denial of a promotion to full Professor in 1992 and 1994 are time-barred. As for Plaintiff's claims- of wage discrimination, "race based, discriminatory wage payments constitute a continuing violation of Title VII." Calloway v. Partners National Health Plants, 986 F. 2d 446, 449 (11th Cir. 1993) . Therefore, Plaintiff's claims for wage discrimination are not time-barred.

.With regard to Plaintiff's Title VII claims for retaliation,- Plaintiff asserts that he was denied a promotion in 1992 in retaliation for letter he wrote in 1991 and early 1992 to the Department Chair in which Plaintiff contends that he. stated that he was being illegally discriminated against because of inequalities in salary. Plaintiff was denied his promotion on February 5, 1993. As Plaintiff never filed a charge of retaliation with the EEOC within 180 days of denial of his promotion, the retaliation claims steaming from the 1992 denial are time-barred an well.

Defendant further contends that Plaintiff's §1981 and§1983 claims are time-barred as they relate to the denial of a promotion in 1992 and 1994. Sections 1981 and 1983 employment discrimination actions are governed by §9-3-22 of the Georgia Code which has been interpreted to provide: an action for equitable relief is barred only after 20 years, but an action for back pay is barred after only 2 years." Howard v. - Roadway EX2ress. Inc., 726 F. 2d 1529, 1532 (11th Cir. 1984) (§ 1981) ; Ann v. East Central Health District, 752 F. 2d 615, 618 (11th Cir. 1985). Therefore, Plaintiff's claims for compensatory damages relating to his 1992 denial of a promotion pursuant to §§ 1981 and 1983 are barred by the statute of limitations, whereas his claims for injunctive relief are still viable. Plaintiff withdrew his application for the 1994 promotion sometime in October 1994. Since Plaintiff

filed his EEOC charqe in April of 1996, his §S 1981 and 1983 claims for back pay and damaqes as a result of the denial of the 1994 promotion are not barred by the statute of limitations.

Remaining for this court to consider, are Plaintiff's Title VII claims for race and retaliation as they relate to his 1995-96 denial of a promotion to full Professor; his wage discrimination claims; his §§ 1981 and 1983 claims for back pay and damages as they relate to his 1994-95 and 1995-96 denial of a promotion, as well as his claims for injunctive relief for those dates and the 1992-93 denial; and his state law claims.

In his objections to the R&R, Plaintiff raises the following five objections and contends that the Magistrate Judge erred in finding (1) that Plaintiff failed to show that Defendants' proffered reason for their failure to promote Plaintiff is mere pretext; (2) that Plaintiff did not set forth a prima facie case of retaliation; (3) that Plaintiff failed to make out a prima facie case of waqe discrimination; (4) that the individual Defendants should be dismissed on the qrounds of qualified immunity; and (5) that this court should decline to exercise supplemental jurisdiction over Plaintiff's state law claims. The court will now turn to a discussion of Plaintiff's first objection.

Plaintiff contends that the Magistrate Judge erred in concluding that he failed to show that Defendants' proffered reason for their failure to promote Plaintiff is mere pretext.[9] Courts are reluctant to review the merits of a tenure decision.[10] Zahorik v. Cornell University, 729 F.2d 85, 93 (2" Cir. 1984). For a Plaintiff to succeed in carrying his burden of persuasion,

> the evidence must show more than a denial of tenure in the context of disagreement about the scholarly merits of the candidate's academic work, the candidate's teaching abilities or the academic needs of the department or

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[9] The court notes that while only the 1995-96 promotion decision remains for purposes of Title VII , as Plaintiff still has equitable relief available stemming from the 1992-93 and 1994 denials, the court will consider whether Plaintiff can meet his burden as to all dates involved. The elements of the Title VII claim apply to claims brought under §1981, Howard v. BP Oil Company. Inc., 32 F.3d 520, 524 (11-h Cir. 1994). and to §1983 claims,Southern Methodist University,, 116 F.3d 775 (11th Cir. 1997).

[10] While this case is not a tenure decision, Defendants utilize the same seven stop review process tenure and promotion decisions.

> university. ' Absent evidence sufficient to support a finding that such disagreements or doubts are influenced by forbidden considerations such as sex or race, universities are free to establish departmental priorities,-to set their own required levels of academic potential and achievement and to act upon the good faith judgments of their departmental faculties or reviewing authorities.

Id.. at 94.

Plaintiff contends first that the Magistrate Judge applied the wrong standard for analysis for Plaintiff's burden. Plaintiff mistakenly relies on Howard v. BP Oil Co.Inc. 32 F.3d 520 (11th Cir. 1994) for the proposition that he need only show that a defendant's articulated reason is false and not a pretext for discrimination. In fact, Howard holds that "once defendant states a legitimate reason, plaintiff must show that defendant's articulated reason is merely a pretext and that defendant's true reason for discharging plaintiff was discriminatio. Howard 32 r.3d at 524-215, citing,, Rolling y., TechSouth. Inc., 833 F.2d 1525, 1528-29 (11th Cir.1987). Because this is a summary judgment action, Plaintiff need only raise a genuine issue of material fact that the reason was a pretext; he does not need to actually prove it. Maddow v. Proctor Gamble Company, 107 F.3d 846, 851 (11th Cir. 1997).

Plaintiff also argues that the Magistrate Judge incorrectly read the guidelines for promotion to include a requirement that Plaintiff be notable in the area of internal service or incorrectly concluded that Plaintiff failed to have at least a "satisfactory" level of internal service. Plaintiff asserts that the policy guidelines indicate that service can be internal and external to the university, that Defendants have acknowledged that Plaintiff's external service has been notable, and that Plaintiff's internal service hae been greater than "satisfactory."

The Tenure and Promotion Committee's proffered rationale for not pronotinq Plaintiff in 1992,was that neither Plaintiff's Professional Growth and Development nor his Institutional Service qualified as notable. The guidelines. require an applicant to receive a notable ranking in at least one of the two areas and perform at a satisfactory, level in the other area. In 1992, Plaintiff had not published a single refereed article in a recognized

publication since coming to KSU in 1988. Plaintiff does not dispute this fact. Instead, Plaintiff focuses on the finding that his service was deficient. Defendants contend thatPlaintiff was not promoted as a result of an absence of campus leadership and institutional service. Plaintiff, until 1992, served as an advisor to a sorority, and in 1991, he served as a member of the college PAC and on a committee selecting students for an award. Plaintiff offers no other evidence of internal leadership.

Plaintiff states that he satisfied his. Internal service requirement by introducing some new courses at KSU. Defendants did not find this contribution sufficient to fUlfill his,"obliqation of internal institutional service" such that it qualified for a notable ranking. [KSU policy and procedures handbook, DSMF, Exhibit D-2]. Plaintiff has not offered any evidence to support a finding that Defendants I considerations were influenced by his race. As such,, Plaintiff has not raised a genuine issue of material fact that the Defendants' reasons are mere pretext and summary judgment is granted as to Plaintiff's 1992 promotion denial.

As for Plaintiff's 1994 denial of promotion,, the record shows that Plaintiff virtually ceased all participation in any internal service activities as prescribed by the KSU policy. This failure to fulfill his obligation of internal service rendered him unqualified for either a notable or satisfactory score in this area.

Moreover,, because the Defendants did not believe that Plaintiff had published refereed articles in any significant academic journal, he did not receive a notable score in the category of Professional Growth and Development. Plaintiff has not provided any evidence that Defendants' considerations were influenced by his race. Therefore, summary judgment was properly granted as to laintiff's 1994 promotion claim.

By the time of his 1995 application, Defendants concede that Plaintiff had successfully published refereed articles in a significant academic journal. However, Defendants arque that Plaintiff was unworthy of a satisfactory assessment in the area of institutional service as Plaintiff had failed to initiate any internal service. Plaintiff offers no evidence to rebut this finding. Instead, he focuses on his -many external activities. However, Defendants made it very clear that while institutional service may be comprised of both internal and external activities, all full-time faculty had an obligation to perform internal service. Plaintiff repeatedly ignored these requirements and was therefore

unworthy of promotion under this criteria. Therefore,, because Plaintiff failed to raise a genuine issue of material fact that Defendants' reasons are a pretext for discrimination, summary judgment in proper as to Plaintiff's 1995 promotion application claims. In sum, the court adopts the Magistrate Judge's recommendation to grant summary_judgment as to Plaintiff's Title VII claims for failure to promote him to full Professor.

Plaintiff's second objection is to the Magistrate Judge's finding that he did not set forth a prima facie case of retaliation in that Plaintiff could not establish a causal link with regard to Defendants' denial of Plaintiff's application for promotion. In order to establish a prima facie case of retaliation, Plaintiff must show (1) a statutorily protected expression; (2) an adverse employment action; and (3) a causal link between the protected expression and the adverse action. Ra *v v. Vinson Guard Aervice. Inc., 120 F.3d 1192,, 1196 (lit' Cir. 1997). Once Plaintiff establishes a prima facie case, the burden shifts to the Defendants to offer a legitimate nondiscriminatory reason for their action.[14] If Defendant does so, the burden shifts back to the Plaintiff to raise a genuine issue of material fact as to whether the reason is pretext. Id. The court need not address Plaintiff's argument that he did establish a causal link, because, even assuming arguendo that Plaintiff can establish a prima facie case, as stated above, Defendants have proffered a legitimate nondiscriminatory basis for not promoting Plaintiff and Plaintiff has not shown that their reasons are not pretext. Therefor, summary judgment is appropriate as to Plaintiff's claims for retaliation for the claims of promotion.

The Magistrate Judge further found that Plaintiff did not establish a prima facie case of retaliation for filing his EEOC complaint.[11] Plaintiff filed his complaint with the EEOC on April 12, 1996. On May 31, 1996 Plaintiff received an evaluation ~e=taliation from Department Chair' Tutterow of "at expectations" in the areas of teaching and service for the 1995-96 academic year.[12] in previous annual reviews, Plaintiff had always been rated

[11] Plaintiff does not dispute the Magistrate Judge's finding that a February 6,1996 memorandum from the vice President of Academic Affairs at KSU did not constitute adverse action. Therefore, the court will not address this aspect of Plaintiff's claim.

[12] Plaintiff received a review of "above expectations" in the area of research.

at "above expectations" in those areas. It, is undisputed that Plaintiff's EEOC complaint is a statutorily protected expression and there is a sufficient causal connection as a result of the temporal proximity. The Magistrate Judge found the downgrade to be "minor" and that Plaintiff did not establish that the evaluation constituted an adverse employment action. Plaintiff contends that a review of "at expectations" will preclude promotion to full Professor. However, he does not of for any evidence to substantiate his assertion. Rather, the evidence in the record shows that a rating of "at expectations" is not an obstacle to promotion. (Tutterow affidavit at 62]. As Plaintiff has not proffered any evidence to support his contention, the court finds that he has not met the "threshold level of substantiality" required in order to maintain an action for retaliation.v. Wala-Xart Stores, Inc., 141 F.3d 1453,, 1456 (111* Cir. 1998). Therefore, summary judgment in granted as to Plaintiff Is. claim for retaliation stemming from his filing of his EEOC charge of discrimination.

Plaintiff's third objection is to the Magistrate Judge finding that he failed to establish a prima facie case of waqe discrimination. In order to establish a prima facie case of "racial discrimination with respect to compensation, the plaintiff must show that he was paid less than a member of a different race was paid for work requiring substantially the same responsibility." Pittman v. Hattiesburg Municipal Separate School District District, 644 F.2d 1071, 1074 (5th Cir. 1981).

Plaintiff argues that because he teaches many finance courses, he should be compared with those individuals teaching finance and those who are fuil Professors of finance who do not have terminal degrees in finance.[13] Plaintiff looks to compare himself to four individuals: Nichael Curley ("Curley"),, Billy Ann Brotman ("Brotman"), Tom Miller ("Miller"), and Roger Tutterow ("Tutterow") as examples of individuals who receive higher salaries without a terminal degree in finance. Brotman and Miller do not have Ph.D. in finance; however, they are full Professors of finance. Curley formerly held the position of

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[13] There is no dispute that teachers with terminal degrees in finance receive higher salaries at KSU than those, like the Plaintiff, with a terminal degree in economics because they are more in demand and command higher salaries than those with a Ph.D. in economics.

Chairperson of the Department of Economics and Finance and had completed a year of post-doctoral studies in Finance. Tuttorow is the Chair of the Economics and Finance Departments. Plaintiff has not offered any evidence that these individuals who are full Professors and who bear administrative duties perform work requiring substantially the same responsibility as that of the Plaintiff, who does not possess post graduate training in finance has not achieved the status of full Professor and does not have administrative responsibilities.

The court agrees with the Magistrate Judge' s finding that more relevant comparisons can be made with those individuals in his department with a terminal degree in economics who are Associate Professors. Plaintiff is paid more than three of the four Associate Professors in his department who, like Plaintiff, teach only teach economics courses.[14] Furthermore, Plaintiff does not dispute that he makes more than two of the other three Associate Professors in department who, like Plaintiff, teach economics and finance courses.[15] Those individuals who perform work requiring substantially the same responsibility as that of the Plaintiff are the individuals against whom Plaintiff's salary should be measured. Upon doing so, it is clear that Plaintiff is paid more than those others similarly situated in his Department Therefore, Plaintiff has failed to establish a prima facie case of wage discrimination and the court will grant motion for summary judgment as to his claim for wage discrimination.

Where §1981 is used as a basis for relief from employment discrimination, the elements required to establish a§1981 claim mirror those required for a Title VII claim. Hgward v. BP Oil Company. Inc.,, 32 F.3d 520, 524 n.2 (11-h Cir. 1994). Moreover, when §1983 1 "is used as a parallel remedy for transgression of §1981 and ... Title VII, the elements of the causes - of action do not differ. . . Whiting v. Jackson State University, 616 F.2d 116,

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[14] Plaintiff does not dispute the Magistrate Judge's finding that the one Associate who only teaches economics and makes 0 than Plaintiff, Dr. Prime, benefited from market-driven higher starting salaries. Prime was hired three years after Plaintiff. Salary comparisons are based on a review of the salaries from academic years 1990-91 through 1996-97.

[15] The only Associate Professor who teaches both economics and finance and makes more than Plaintiff is Tutterow, the Chair of the Departments of Finance and Economics. who is not a similarly situated individual.

122' (5" Cir. 1980). Therefore, having determined that Defendants are entitled to summary judgment with respect to Plaintiff's Title VII claims, the court will grant summary judgment as to Plaintiff's claims under 42 U.S.C.§1981 and 42 U.S.C.§1993 against Defendants in their official capacities.

Plaintiff's fourth objection is to the Magistrate Judge's determination that the individual Defendants should be dismissed on the grounds of qualified immunity. A claim against defendants in their individual capacity is not proper under Title VII. Busby v. City of Orlando,, 931 F.2d 764 (11th Cir. 1991). Even assuming that Plaintiff could state a claim against these individual defendants under§1981 or§1983, as the Magistrate Judge did,. any such claim would be subject to the defense of qualified immunity. Qualified immunity protects government officials performing discretionary functions from civil liability if their conduct violates no "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzaerald, 457 U.S. 800, 818 (1982). "(01nly in exceptional cases will government actors have no shield against claims made against them in their individual capacities." Lassiter v. Alabama A&M University Bdof Trustees, 28 F.3d 1146, 1149 (11th Cir. 1994).

> In order for an individual to lose qualified immunity,the law must have earlier been developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that 'what he is doing' violates federal law.

Id. (citation omitted). As long as the Defendants could reasonably have thought that their actions were consistent with the rights they allegedly violated, then they are entitled to qualified immunity. Busby 931 F.2d at 773. "The Plaintiff has the burden of showing that the defendant violated clearly established constitutional rights." Id. Plaintiff has not met his burden.

While employment discrimination based on race is clearly established, Plaintiff has not shown that it was obvious that Defendants' actions violated his clearly established statutory or constitutional rights. Even assuming that Plaintiff could -discharge

this portion of his burden, in light of the findings supra, the record shows that the Defendants could reasonably have thought that their actions were consistent with the rights they allegedly violated. Therefore,, they are entitled to qualified immunity and are hereby dismissed from the instant action.

Plaintiff did not object to the Magistrate Judge's recommendations of summary judgment regarding ADEA claim as well as his §1983 claims against the Defendants in their official capacity pursuant to the Eleventh Amendment. Therefore, after reviewing the Magistrate Judge's analysis, the court adopts the Magistrate Judge's R&R as to those claims. Furthermore, the court will adopt the Magistrate Judge's recommendation and decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims.

Accordingly, Defendants' motion for summary judgment [#20] with respect to Counts I - VI of Plaintiff's complaint is hereby Granted. Counts VII-IX of Plaintiff's complaint are hereby DISMISSED. Plaintiff's motion to file excess pages [#42] is GRANTED.

SO ORDERED, this 29 day of September, 1998.

Signed
Orinda D. Evans
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-9274

June 9, 1999

KASHI NATH TIWARI,
Plaintiff-Appelant

versus

BOARD OF REGENTS OF THE UNIVERSITY System of Georgia , Kennesaw State University, ET AL.,
Defendants-Appellees

On Appeal from the United States District Court for the Northern District of Georgia

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Before: Barkett, Circuit Judge, Kravitch and Magill* Senior Judges

PER CURIAM: :

The petition(s) for rehearing filed by Appellant, Kashi Nath Tiwari, is DENIED.

ENTERED FOR THE COURT:

Signed: Rosemary Barkett
UNITED STATES CIRJUIT JUDGE

*Honorable Frank J. Magill, Senior U.S. Circuit Judge for the Eleventh Circuit, sitting by designation.

ORD-41

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTLA DIVISION

CIVIL ACTION
No. 1:97-CV-652-ODE

August 14, 1998

KASHI NATH TIWARI
Plaintiff

V.

THE BOARD OF REGENTS OF THE UNIVERSITY OF GEORGIA,
Michael D. Curley, individually and in his official capacity,
Roger C. Tutterow, individually and in his official capacity, and
Timothy S. Mescon, individually and in his official capacity,

Defendants.

ORDIR

The above- captioned employment discrimination action is before the Court on Defendants' motion to compel (101 and Plaintiff's motion to compel [151 .As of this date the Court has issued a Report and Recommendation in which it has found and recommended that Defendants' motion for summary judgment [201 should be granted and that judgment should be entered for each of the Defendants on all counts of Plaintiff's complaint. Neither party contended in connection with Defendants' motion for summary judgment that the matter could nor be decided without the information sought in their respective motion to compel. The Court has reviewed those motions and the information sought and has concluded that, if the Court were to grant the motions to compel, the parties would not obtain any material information that would affect its decision on Defendants' motion for summary judgment.

Accordingly, the Court hereby DENIES Defendants' motion to compel [101 as moot and similarly DENIES Plaintiff's motion to compel [151 as moot. This order is without prejudice to either party renewing their motions if this Court's Report and Recommendation is not approved or, if approved, is subsequently reversed.

IT IS SO ORDERED this 14th day of August, 1998.

C. Christopher Hagy
UNITED STATES Magistrate JUDGE

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by ppropriate legislation, the provisions of this article.

United States Codes:

29 U.S.C. Sec. 2615. Prohibited acts

(a) Interference with rights

(1) Exercise of rights: It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

(2) Discrimination: It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.

(b) Interference with proceedings or inquiries It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual -

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this subchapter;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this subchapter; or

(3) has testified, or is about to testify, in any inquiry or

proceeding relating to any right provided under this subchapter. Title VII of the Civil Right Acts of 1964

42 U.S.C. Sec. 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer -
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(k) Burden of proof in disparate impact cases

(1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if -

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)

(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process

are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

42 U.S.C. Sec. 2000e-3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception It shall be an unlawful employment practice for an employer, labor organization,

employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

42 U.S.C. Sec. 2000e-5. Enforcement provisions

(f) Civil action by Commission, Attorney General, or person aggrieved ....

(1) ... if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action this section ... the Commission, ... shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge ... by the person claiming to be aggrieved.

Federal Rules of Civil Procedures

Rule 56. Summary Judgment

(b) For Defending Party.

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary udgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon.

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the dayof hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(e) Form of Affidavits; Further Testimony; Defense Required.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable.

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith.

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be djudged guilty of contempt.

Recommendation Letter by Kochman

To: PAC-1995, KSC October 1, 1995

Dear Colleagues:

With extraordinary accomplishments in research, teaching, and professional leadership, Kashi Tiwari stands out, all alone in a league by himself. In the light of his outstanding research, distinguished teaching, and remarkable professional leadership, Kashi is the *heart and soul* of our department. He has represented us in every professional forum. He is our ambassador to the outer world, beyond the Cobb. One cannot help but be fascinated by his professionalism, dedication, and integrity. For an individual of Kashi's stature in the finance profession, I feel I am not even qualified to write in his behalf. I have had the distinct privilege of working with Kashi over the past 13 years. It is with honor that I write this letter in support of his promotion to professor. He is a dedicated, disciplined, and distinguished researcher, teacher, and professional leader in the finance discipline. He has won outstanding paper award, distinguished teacher nomination, SFA board of director nomination, and a lot more.

Research in Finance: The outstanding-paper-award winner Kashi is a legend and an embodiment of financial research. He is a soloist. He has published extensively [173 Publications: all single-authored in Journals, Proceedings, Book Reviews, Abstracts]. His theoretical research works cover a wide array of subjects pertaining to *futures and options, financial markets, financial institutions, and multinational finance.* He has published numerous refereed journal articles, numerous journal articles based on conference presentations, numerous refereed proceedings in the national and regional conferences, numerous book reviews, numerous regular proceedings, and abstracts. I am proud to acknowledge that Kashi has published more articles in the prestigious finance journals than I and many other authors. Additionally, Kashi has 206 paper presentations to his credit. His articles have successfully gone through the rigorous selection processes of the highly-competitive well-recognized national and regional finance conferences: FMA, SFA, EFA, MFA, SWFA, AFS, and NAEFA. The acceptance rate for these conferences is low, yet Kashi continues to have success after success; I know numerous authors, including myself, who have had no such

success. I take pride in him and congratulate and applaud him for his extraordinary successes with these professional associations. I was proud of Kashi's achievements when his paper was honored with the *Outstanding Paper Award* at the 1995 conference of the SEDSI. There were over 350 contributors to the 1995 SEDSI conference according to the program index. There was only one outstanding paper award for the entire conference that was awarded to your colleague, Kashi. I was proud to see Kashi being honored and congratulated by deans, chairs, & faculty from various universities. The DSI has a rigorous competitive selection process, in that each paper is blind refereed by 3 reviewers. In 1994, Kashi had 2 papers accepted for regular sessions at the DSI national conference, none for me. Kashi is a scholar who each year competes with finance professionals nationally. The intellect, talent, flexibility, and discipline that he possesses, our gifted Kashi is quite accommodative. Realizing that we are not a resource-rich institution, without GTAs and GRAs, he has relied heavily on his own private resources. He is thankful to us for providing some relief from institutional services.

Teaching in Finance: The distinguished-teaching-award nominated Kashi possesses depth and versatility in teaching finance; he has taught a variety of graduate and undergraduate finance courses: GBA-839, GBA-835, GBA-836; F460, F456, F455, F400, F490. He has received outstanding teaching evaluations in all of his courses. What distinguishes Kashi from others is his dedication to be current in the classroom, in that he integrates up-to-date financial research from professional conferences, practitioner's outlets, and academic publications. Moreover, his ability to present the material at a student-digestible level is unparalleled. Some of the highlights of his teaching evaluation scores at KSC are: 4.00, 3.88, 3.75, 3.71, 3.70, 3.57, 3.30, 3.25, 3.22, 3.21, 3.16, 3.15. He possesses a unique style in terms of presentation and delivery of current issues that keeps his students attentive and glued to his lectures.

Professional Leadership in Finance: Leadership *Recognition* award winner Kashi has served the finance profession in a variety of roles for FMA, SFA, EFA, MFA, SWFA, AFS: paper discussant (117 times), session chair (72 times), section conference coordinator, program committee, award committee, special session organizer, journal referee, associate editor, and others. He was nominated for the *Board of Directors, Southern*

Finance Association (along with 3 professors & distinguished chairholders, and a GSU chairholder). He has been a coordinator of the WSSA-finance programs for the last 9 years, through which numerous KSC faculty have benefited. National scholars have acknowledged Kashi's contribution in their books (Alan Shapiro, Don Chance, Bob Kolb).

In the finance associations, his fellow professors have long recognized his leadership skills; they constantly seek his help, guidance, and expertise in managing association activities. Kashi is a highly respected and well recognized dynamic leader; he is our link to the national finance associations.

Internal Service: Kashi has proposed, introduced, and directed new courses at KSC. He participates in MBA-hoodings. He has been an advisor to the Phi Mu Sorority. He has been in the *Leadership Kennesaw State College*. He has provided an extensive positive publicity to KSC's name through his advertisements; I commend him for putting the name of KSC in the pages of the following prestigious journals: *Journal of Finance, Financial Management, Journal of Financial & Quantitative analysis, Journal of Financial Research, Financial Review, Eastern Economic Journal, Southern Economic Journal, J. of Economic Perspectives, Financial Practice & Education.*

He has assisted numerous KSC faculty members in various association activities that he has supervised. He is always ready to help his peers. He has always helped all of us, who have sought his help. He manages large association programs year around, and has an extremely hectic schedule. He has covered for my classes as well as for the classes of numerous other professors, whenever requested. In serving a commuting student body, he is very generous with his time; he assists students toward their study and career plans by being available to them beyond the normal hours: early mornings (5 a.m.), late nights, and weekends. He has kept our AACSB goals in focus through his research, teaching, and professional leadership. He has always volunteered to do everything to meet the AACSB/SAC requirements. Whenever the department chair has asked him for materials pertaining to AACSB, his responses had been instantaneous.

My association with Kashi spans over more than 13 years; he has personally assisted me in my research work, journal reviews, KSC working paper review, and conference presentation. Kashi

delivered my presentation speech in Washington, D.C. a few years ago at his own expense; prior family obligations had precluded my attendance. He has regularly assisted me in journal review processes. He reviews articles for me promptly, efficiently, and with professional objectivity. He has been a loyal and reliable assistant to me over a decade. Just a month ago, I had passed the deadline for a journal review; I was extremely busy between family and academic obligations. While the journal editor was sitting on my head with reminders, I was unable to lay my fingers on it. I turned to Kashi for help. He set aside his own work, and promptly furnished his report on the article to me.

The Endearing Kashi: Kashi is a highly respected academician in our profession. He is admired and loved by his professional peers and KSC students. Kashi has the loving personality that endears him to his students and his fellow academicians. It is evidenced by his consistent outstanding teaching evaluations year after year, and his being constantly bestowed with professional leadership roles. Only a likable person of Kashi's stature with integrity, judgment, and care can achieve such rare feats. Endearingly, I am his *master Kochman*; Don Sabbarese is his *holy-man*; and Roger Tutterow is his *genius-man*. We ought take advantage of his professional standing; he has assisted 8 KSC faculty and he will assist others when approached.

A strictly vegetarian, Kashi is blessed with a rare combination of disciplined mind, body, and soul. His long days begin with an early morning 8-mile jog, while late nights end with an inter-galactic contemplation. Between these two ends are the prolong hours of research, teaching, and professional management. His extraordinary achievements in the areas of research, teaching, and professional leadership are perhaps the byproducts of his constant quest for a disciplined body and cleansed soul.

Kashi is our pride: Kashi possesses the traits of a true dynamic leader: tenacity, perseverance, equanimity, and broad-mindedness; his is the saga of an American workmanship. He is a leader; he is *our* leader. In the finance discipline, Kashi is a researcher, Kashi is a teacher, and Kashi is a leader. Kashi has provided wide positive publicity to KSC. Kashi has brought name and fame to our department. I am proud of his accomplishments and proud of being his colleague. Kashi has had a long industrious journey. Kashi does exactly what an academician does in the finance discipline. With professional

integrity, objectivity, and obligation, I admire and applaud Kashi's extraordinary accomplishments. I strongly recommend him for promotion to professor. Kashi is the one that deserves to be the full Professor of Finance in all respects. Kashi is the Professor of Finance.

Sincerely,

Ladd Michael Kochman
Professor of Finance

Recommendation Letter by Gene Henssler

Dr. Gene Henssler

September 28, 1995

PAC-1995
Kennesaw State College

Dear Colleagues:

Kashi Tiwari has distinguished himself in the finance discipline with an impressive research record, outstanding teaching, and remarkable professional leadership and service.

Research in Finance: Kashi Tiwari has an outstanding research record in the finance discipline, and has been honored with the 1995 SE-DSI Outstanding paper award. He has far exceeded the research expectations both qualitatively and quantitatively at KSC. He is exceedingly versatile in his research coverage and has covered various facets of the finance discipline. To his credit, he has:

(i) numerous refereed journal articles and has published in highly respected finance journals

(ii) numerous journal articles based on conference proceedings

(iii) numerous refereed proceedings at the national, international, and regional conferences

(iv) numerous Book Review publications

(v) numerous regular proceedings publications

(vi) numerous proceeding abstracts

(vii) newspaper articles

(viii) numerous refereed paper presentations at highly regarded professional conferences which have rigorous competitive selection process. I particularly congratulate him for his successes

with the *Financial Management Association, Eastern Finance Association, Southern Finance Association, Midwest Finance Association, Southwest Finance Association, Academy of Financial Services, North American Economics and Finance Association, National Decision Sciences Institute*, and many others.

All of his publications are single-authored and represent an extensive amount of hardwork, dedication, and scholarship. His articles have been cited in *Finance Literature Index*, J.L. Heck.

Teaching in Finance: Kashi Tiwari has an outstanding teaching record in finance courses. He has been nominated for the Distinguished Teaching Award. He consistently receives good evaluations from his students. At KSC, he has taught a variety of graduate and undergraduate courses: GBA 839, GBA 835, GBA 836; F460, F456, F455, F400, F490, E340, E446. I particularly note that he provides study session on Sundays, early mornings, and late nights to accommodate the commuting body of our students. He emphasizes current issues and extemporize new concepts and ideas. He brings to his classroom the updated research of academicians from various professional conferences. His students are fortunate to have him as a teacher. He has laudable teaching evaluation scores: 4.00, 3.88, 3.75, 3.71, 3.70, 3.57, 3.30, 3.25, 3.22, 3.21, 3.16, 3.15. He is a dedicated teacher and I commend him for that.

Professional Leadership and Service in Finance: Kashi Tiwari has achieved laudable leadership roles with several academic associations. He has served the academic profession in a variety of roles: conference coordinator, track chair, program committee, award committee, session chair, discussant, special session organizer, paper reviewer, journal referee. I congratulate him for his nomination for the Board of Directors for the *Southern Finance Association* and WSSA executive committee. He has devoted extraordinary amount of his energy in coordinating the finance and business section of the WSSA annual conferences for the last eight years. His recognition as a talented coworker and leader in the academic associations such as SFA, FMA, EFA, MFA, SWFA brings name and fame to the school of business. It demonstrates the strong confidence that the other academicians have in him. I commend him for that.

Internal Service: Kashi Tiwari has provided wide positive publicity to KSC. Wherever his name appears, KSC's name appears right next to it. He has proposed, introduced, and directed new courses at KSC. He has been an advisor to the Phi Mu Sorority. He has always been ready to help his peers professionally as is evidenced in his assisting eight KSC faculty in academic association activities and journal review process.

Professional Growth: Kashi Tiwari has continued to enhance his knowledge by attending the annual conferences of:
American Finance Association, American Economic Association, Financial Management Association, Eastern Finance Association, Southern Finance Association, Midwest Finance Association, Southwest Finance Association, Academy of Financial Services, North American Economics and Finance Association, National Decision Sciences Institute, Eastern Economics Association, Western Economic Association, Southern Economic Association, Midsouth Academy of Economics and Finance, and Western Social Science Association.

I strongly recommend him for promotion to full Professor of finance. Thank you.

Sincerely,

Gene Henssler
Professor of Finance

Stark-contrast Pre-Retaliation-period and Retaliation-period

Pre-Retaliation Period glowing-evaluations of Tiwari by KSU-officials

Kashi Nath Tiwari was on top with the highest-evaluation given to any faculty by KSU-officials. Tiwari was judged the best in all of the three areas (scholarship, teaching, and service)

1988-1989: "Above-Expectations-Scholarship" at KSU-institution
1989-1990: "Above-Expectations-Scholarship" at KSU-institution
1990-1991: "Above-Expectations-Scholarship" at KSU-institution
1991-1992: "Above-Expectations-Scholarship" at KSU-institution
1992-1993: "Above-Expectations-Scholarship" at KSU-institution
1993-1994: "Above-Expectations-Scholarship" at KSU-institution
1994-1995: "Above-Expectations-Scholarship" at KSU-institution

1988-1989: "Above-Expectations-Teaching" at KSU-institution
1989-1990: "Above-Expectations-Teaching" at KSU-institution
1990-1991: "Above-Expectations-Teaching" at KSU-institution
1991-1992: "Above-Expectations-Teaching" at KSU-institution
1992-1993: "Above-Expectations-Teaching" at KSU-institution
1993-1994: "Above-Expectations-Teaching" at KSU-institution
1994-1995: "Above-Expectations-Teaching" at KSU-institution

1988-1989: "Above-Expectations-Service" at KSU-institution
1989-1990: "Above-Expectations-Service" at KSU-institution
1990-1991: "Above-Expectations-Service" at KSU-institution
1991-1992: "Above-Expectations-Service" at KSU-institution
1992-1993: "Above-Expectations-Service" at KSU-institution
1993-1994: "Above-Expectations-Service" at KSU-institution
1994-1995: "Above-Expectations-Service" at KSU-institution

"You are a dedicated teacher, perhaps the most dedicated at Kennesaw State University. Your willingness to extend your help to all your students at all times is beyond compare. Your students are fortunate to have the benefits of both your knowledge and energy. Your professional development is equally impressive. You have many publications, many presentations, and many other conference roles to your credit. You are indeed a scholar. We commend you for your outstanding work and are **strongly** recommending you for promotion... **unanimously** agreed

to recommend you for promotion to *Professor*" *(October 20,* 1992; Economics/Finance promotion/tenure committee).

"I have received your portfolio and am pleased to support your promotion to professor. Your portfolio demonstrates what I know to be true: a dedication and disciplined commitment to teaching and research, and professional service of remarkable proportion. Your accomplishments are at a pace exceeding normal expectations. I know you will continue to exercise the same intense level of effort demonstrated in the past and that you will continue to bring scholarly prestige to the department, school and college." (October 28, 1992, Michael curley, Chair)

"You teach a variety of courses, at all levels of instruction, consistently receive strong student support for your efforts. Your dedication to teaching, and willingness to go beyond the norm in helping and preparing students is especially commendable Your performance in the area of professional growth and development in simply outstanding. You have numerous publications to your credit. You are actively involved in professional meetings as both presenter and discussant. Clearly, your success in this area is far above the norm at Kennesaw State College.... Your external involvement in academic organizations is of highest quality... committee found your performance in the area of institutional service to be more than satisfactory... The area of institutional service is satisfactory." (October 18, 1990; Economics/Finance promotion/tenure committee).

On October 24, 1990, Mike Curley, the Chair, writes about Dr. Tiwari: "Your dedication to the profession: teaching, service, and research is laudable. Your research productivity is nothing short of a phenomenon! Your careful attention to course design, content, and delivery are evidenced by your outstanding evaluations. Service to the academic and professional community at large is continuous and at high level of involvement."

On January 8, 1991, the Dean, Tim Mescon, writes about Dr. Tiwari, "You distinguish yourself, the Department, and the School in a remarkable way through your research and writing. Visibility in regional, national, and international programs enhances the Department and I applaud your many tireless efforts. Your teaching is indeed notable and I congratulate you on your innovation, pedagogy, and approaches. Additionally, you've taught a variety of courses in both economics and finance and I am

grateful for your willingness to instruct in both areas. Serving as a faculty advisor to a sorority is no easy task and to me, this represents a notable service. Additioanlly, your involvement in Leadership Kennesaw allows peers across to work with you in a more collaborative manner."

Acknowledging Dr. Tiwari's contribution to the KSU-institution, the department Chair (March 20, 1990) writes:

"The service component is especially noteworthy as it relates to academic organizations. With so much time and effort devoted to teaching, research, professional development, and academic service, I hesitate to suggest some added attention to internal service. I know you operate intensively and at full-capacity; increased internal involvement can only come at the expense of external academic involvement, teaching or professional involvement." "Quite frankly, I think you are doing more than one should expect and would not want to see you draw back from the areas in which you have such demonstrated successes. I feel the University, School, and Department benefit from some faculty specialization." **"You are making good progress toward tenure & PROMOTION."**

In recognition of Dr. Tiwari's contribution to the KSU-institution and academia, the department Chair (March 16, 1993) writes: "I [Department Chair] now think that your continued leadership in professional associations has been UNDERVALUED.

KSU has praised Dr. Tiwari over the years for his contribution to academia and its institution. The following are a sample of some quotes from the annual-review letters written by the Chair (1988-89 through 1995):

"You are truly a prolific researcher and writer. The variety and level of your accomplishments here are outstanding and evidence of considerable skill and dedication."

"In the academic achievement area your accomplishments are rather amazing. Obviously, you are a dedicated and talented teacher/scholar.

"Of special merit is your willingness to cover classes for your colleagues."

"Your willingness to take on new preparations [new courses] and your flexibility regarding scheduling has also been noted and appreciated by him and others."

"your careful attention to the classroom environment and your willing commitment of time and energy to extra help sessions are laudable. You have, I think, a rather innovative approach to ensure learning and accomplishment by students without the high risk and anxiety that your high standards would otherwise engender. your attention to this teaching dimension is so complete" **"you are making good progress toward PROMOTION"**

During 1988-89 annual evaluation period, the Chair praised him on Dr. Tiwari's scholarship, teaching, professional leadership and service:

"Your performance level is above expectations and in the academic achievement area your accomplishments are rather amazing. Obviously, you are a dedicated and talented teacher/scholar. You carry out your teaching responsibilities in a professional and competent manner. In particular your careful attention to the classroom environment and your willing commitment of time and energy to extra help sessions are laudable. You have, I think, a rather innovative approach to ensure learning and accomplishment by students without the high risk and anxiety that your high standards would otherwise engender... Your willingness to take on new preparation and your flexibility regarding scheduling has also been noted and appreciated by me and others. You are a prolific researcher and writer. The variety and level of your accomplishments here are **outstanding** and evidence of considerable skill and dedication. Ultimately, I hope you will act as a catalyst for others to become more involved in academic achievement. It's a pleasure to have you as a colleague."

During 1989-90 annual evaluation period, the Chair praised Dr. Tiwari:

"You [Kashi Tiwari] had another extremely productive year here." Your overall performance level is above expectations and I highly commend you on your continued successes in research, teaching and academic service. ...your efforts to present your students with extensive, updated materials in all of your

classes is a model of what extended teaching is all about at KSU. I know it takes extraordinary dedication and effort to continue in this vein. Professional development is taken seriously by you. Your extensive involvement with and leadership in professional organizations has personal benefits but also benefits KSU and economic scholarship, generally. I know much of this is carried on at your own monetary expense. Your efforts in consulting with other finance professors across the country to ensure high quality, contemporary content of your finance course is further evidence of your commitment to teaching and to your own professional advancement. "

"Your research speaks for itself! Excellent!"

"The service component is especially noteworthy as it relates to academic organizations. With so much time and effort devoted to teaching, research, professional development, and academic service, I hesitate to suggest some added attention to internal service. I know you operate intensively and at full-capacity; increased internal involvement can only come at the expense of external academic involvement, teaching or professional involvement."

"Quite frankly, I think you are doing more than one should expect and would not want to see you draw back from the areas in which you have such demonstrated successes. I feel the University, School, and Department benefit from some faculty specialization." **"You are making good progress toward PROMOTION"**

During 1990-91 annual evaluation period, the Chair praised Dr. Tiwari:

"Your performance for the year was above expectations based upon outstanding teaching, research, and external professional service."

"Thanks for your efforts in making this year a very productive one for the department."

During 1991-92 annual evaluation period, the Chair praised Dr. Tiwari:

"Year after year you [Kashi Tiwari] have demonstrated

extraordinary discipline to scholarship and to your work here. I commend you for that. Thanks for your efforts in making this year a very productive one for the department."

During 1992-93 annual evaluation period, the Chair praised Dr. Tiwari:

"...I [Department Chair] now think that your continued leadership in professional associations has been **UNDERVALUED**..." "Year after year you [Kashi Tiwari] have demonstrated extraordinary discipline to scholarship and to your work here. I commend you for that. Thanks for your efforts in making this year a very productive one for the department." "...expressing his appreciation for your contribution to the department, school, and college..."

During 1993-94 annual evaluation period, the Chair praised Dr. Tiwari: "Year after year you [Kashi Tiwari] have demonstrated extraordinary discipline to scholarship and to your work here. I commend you for that. Thanks for your efforts in making this another productive year." "...expressing his appreciation for your contribution to the department, school, and college..."

During 1994-95 annual evaluation period, the Chair praised Dr. Tiwari: "You deserve above-expectations for your teaching efforts, research accomplishments and professional service activities...you obtain consistently high evaluations from your students. You continue with a high level of professional involvement, have achieved a leadership role and have served in a variety of roles and have assisted several KSU faculty in academic associations activities; laudable accomplishments... "

The June 1992 "Supplemental Information" issued by KSU describes Dr. Kashi Tiwari as a productive associate professor.

The May 31, 1991 Memo of Edwin Rugg, VP, puts Dr. Kashi Tiwari in the category of "extraordinary merit or equity."

Tiwari wrote to KSU-agents volunteering to do additional free-of charge teaching: Dr. Tiwari wrote to KSU for more assignments in Spring-1992: " I chose the teaching profession, because I love and enjoy it. The more I teach, the more I enjoy it.

Neither have I asked for any course reduction in the past, nor I intend to ask for a course reduction in the future. I will continue to accept the normal teaching load, regardless of how much other professional activities I do. I would love to teach more but not less, that is because, I am a teacher by definition...." KSU-agents responded to Tiwari as follows: "[Tiwari] ..works hard, stays very busy with teaching and research. Could not expect more," (Spring-1992, Chair-Curley)

"Dear Kashi: I (Timothy S. Mescon) want to take this opportunity to thank you ever so much for your very kind letter and greetings. Needless to say, I am extremely impressed by your most impressive research record and am delighted that you also have a number of papers in progress. You are to be congratulated for a job very well done and I am pleased that you are a valuable member of the School of Business Administration faculty. I look forward to visiting with you in the not too distant future. [April 24, 1990, Timothy S. Mescon, Dean, Salisbury State University]."

Retaliation-Period statements against Tiwari by KSU-officials

In retaliation, Tiwari's annual-evaluations have been lowered; and as a result pay-raises have been lowered. Travel expenses to attend professional-conferences (to sharpen the teaching and research skills) have been entirely eliminated.

"that you have not initiated or sustained more effort in the area of institutional service, and the collegial, cooperative interaction embedded in institutional service, is a singular but critical area of concern... an impediment to promotion." [Curley, October 30, 1995]

For some more retaliatory-statements made against Tiwari, see page-2 and page-4 (second para) of the KSU-position-statement against Tiwari for EEOC-charge # 110961958.

During the 1995-96 promotion process (retaliation and racial-discrimination evidence is loud and clear), Dr. Tiwari's accomplishments in scholarship and teaching were acknowledged by the jury of peers (economics/finance promotion committee, October 16, 1995):. The jury of peers in the department of Economics and Finance praised Dr. Tiwari for his:

(1) commendable and notable teaching
(2) commendable and notable professional growth and development
(3) "You have filled an important position in the department's commitment to undergraduate and graduate curriculum needs. You are a valued colleague. We value your contributions to our department."

During the 1995-96 promotion process (retaliation and racial-discrimination evidence is loud and clear), Dr. Tiwari's accomplishments in scholarship and teaching were acknowledged by the School of Business promotion committee, November 27, 1995):

(1) notable teaching
(2) superior professional growth and development.

During the 1995-96 promotion process (retaliation and racial-discrimination evidence is loud and clear),, Dr. Tiwari's accomplishments in scholarship and teaching were acknowledged by Dean Tim Mescon, January 10, 1996)::

(1) scholarship is clearly notable
(2) commendable teaching

During 1995-96 promotion-process (October 30, 19995), the retaliating Mike Curley (department chair) makes one last pitiful groping efforts to find words to deride Dr. Tiwari's accomplishments, but nevertheless agreed with the department PAC and added that Dr. Tiwari's professional activities have been extensive, meritorious and evidence of hard work. The department chair has been grossly prejudiced against Dr. Tiwari and has been continuously retaliating since September 10, 1991, when Dr. Tiwari first brought the issue of discrimination in his letter to the Chair; Curley vigorously campaigned against the promotion and tried to contrive his evaluation letters to turn the subsequent jury of peers against Dr. Tiwari.

Fraudulent statements made by Respondents to Federal Court

In retaliation, BOR-KSU-agents have committed perjury during depositions; and, they have made false and fraudulent statements to the federal-court against Plaintiff to defraud the judicial process.

The agents of the attorney-general of Georgia have knowingly and willfully collaborated with KSU-agents in making false and fraudulent statements to the federal-court against Plaintiff to defraud the judicial process to obtain a summary-judgment. (AG-agents are colleagues of KSU-agents as both groups work for the same entity – State of Georgia).

In retaliation, KSU-AG-agents have made Fraudulent incorrect-statements to the federal court with an intent to obtain the "summary judgment." KSU-AG-agents have made incorrect-statements deriding Tiwari's contribution to KSU, and they have made incorrect-statements to cover up the gross-deficiencies of Caucasians. In retaliation, KSU-AG-agents have incorrectly-stated that "Plaintiff failed to publish any refereed articles between ...1988 and 1992;" that publication is the sole criterion to fulfill "scholarship" requirement; that "quality of publication" is a requirement; that "committee work" is the only criterion to fulfill service requirement; that Brotman has Ph.D. in finance; that Miller was a full-professor before coming to KSU, and that all Caucasians promoted to full-professor are "superior" to Plaintiff. In retaliation, KSU-AG-agents have incorrectly claimed to the effect that all full-professor Caucasians have superior qualifications to Tiwari, and that all full-professor Caucasians deserved to achieve the rank of full-professor, while Tiwari does not. Gross deficiencies of Caucasians (in teaching, scholarship, service) are covered up with unqualified glowing support-letters of their brethren (KSU-agents), while Tiwari's glowing accomplishments are derided and downplayed with fabricated-deficiencies by retaliating KSU-agents. Caucasians whose gross-deficiencies have been covered up include, Curley, Moore, Sawyers, Schlact, Stivers, Hall, Rugg, Henssler, Brotman, Kochman, Miller, etc.. The experts-witnesses drawn from AACSB and SAC will help the Court compare Tiwari's accomplishments with those of Caucasians' to determine the level of retaliation-discrimination against Tiwari. The Fraudulent-statements of KSU-AG-agents are incorrect both factually and procedurally.

Contrary to the KSU-AG-agents' Fraudulent incorrect-statements to the federal court:

1. Tiwari has numerous refereed-publications during 1988-92 (all single-authored),
2. Brotman does NOT have terminal degree in finance
3. Tom Miller has never been full-Professor before coming to KSU,
4. Tiwari attended the 1991-PAC meeting in person
5. Tiwari made an outstanding contribution to the 1997-recruitment committee by casting his sole support for Reibman (Jew) and other minorities against the wishes of KSU-agents
6. Gross deficiencies of Caucasians (in teaching, scholarship, service) are covered up with unqualified glowing support-letters of their brethren (KSU-agents), while Tiwari's glowing accomplishments are derided and downplayed with fabricated-deficiencies by retaliating KSU-agents. KSU-officials (Mescon, Rugg, Siegel, Curley, Tutterow) appear to claim that Caucasians such as Hall, Curely, Moore, Sawyers, and others are truly world-class renowned scholars truly deserving of professorship; and, they appear to have used every word to deride Tiwari. This appears to be an academic-profanity.

1. "Publication" issue: Retaliatory

KSU-AG-agents have made Fraudulent incorrect-statements with regards to "publication," in that

1. Publication is not even a requirement for evaluation in "scholarship," at a small teaching-school like KSU, "scholarship is not limited to publications" (per KSU-manual)
2. Quality of publication has no significance, at a small teaching-school like KSU, (since publication is not even a requirement, let alone be the quality). Moreover, Tiwari has more quality-publications than Caucasians, per Financial Literature Index of 1992 when Tiwari was denied by Mescon using "quality" as pretext.
3. Tiwari has numerous refereed-publications during 1988-92 (all single-authored), yet KSU-AG-agents have fraudulently stated that "Plaintiff failed to publish any refereed articles between ...1988 and 1992."
4. Racial KSU-agents have promoted Caucasians with absolutely NO publications.

5. Racial KSU-agents have granted tenure to Ingram and Tutterow with no publications, while denied tenure to Gilliam (Black) and Park (Oriental).
6. For Caucasians, multiple-authored papers (having 4 authors for the same paper) and that too on "non-finance" topics are considered as publication for the whole full-year for finance-salaried faculty.

2. Service-issue: Retaliatory

KSU-AG-agents have made Fraudulent incorrect-statements with regards to "service," in that:

1. KSU-agents have, in retaliation incorrectly claimed that "committee work" is the sole criterion for fulfilling service requirement. Yet, service is not limited to "committee," it is only a tiny segment; per KSU-manual: "Evidence of service includes, but is not limited to, the following sources: Committees, Development of programs, Teaching of non-academic-credit courses, Teaching of non-academic-credit courses, advisement of undergraduate and graduate students, Support student activities...in student organization, Participation in recruitment, Volunteer Work, Judging Contests, consulting,..."
2. Service can be internal "OR" external as is clearly laid out in Rugg's own statement in KSU-manual, "Notable service for some will occur at the department and school levels and for others it will involve campus-wide activities **"OR"** civic and professional groups."
3. KSU has given full-professorship (exclusively only) to Caucasians who had provided NO-service, through a backdoor "Whites only" policy.
4. Tiwari has provided an outstanding "internal-service" in guarding the interest of KSU through his support for well-qualified minorities and through his concerns about the prevailing anti-Semitism (Brotman (Jew), Reibman (Jew), Katz (Jew). In contrast, KSU-officials have done disservice to KSU-institution by engaging in unlawful retaliation-discrimination against Candace Kaspers, Palmer (Jew), Koch (Jew), Schwartz (Jew), and Levingston (Jew). that entailed an unprecedented and unwarranted monetary costs to KSU. KSU has to retain an in-house attorney to continue to perpetuate the unlawful retaliation-discrimination practices of the current KSU-agents. (Needless to say that hundreds of scholarships could be

generated for Blacks with the annual salary of the in-house counsel, were it not to the intense-desire of KSU-agents to continue their unlawful retaliation-discrimination practices.)

5. Tiwari had to distance himself from racial-committees upon learning their anti-Semitic and anti-minority selection processes, as is evidenced through chair-denial to Brotman (Jew), job-termination of Reibman (Jew), tenure denial to Gilliam (Black) and Park (Oriental), and job-termination of a tenured-Asian, Micha Chan (Oriental).
6. Tiwari had to further distance himself from racial-committees, after listening to Kaspers and Gilliam. Kaspers, a former KSU-official, complained that "Jews have been underrepresented and the victim of religious discrimination and a hostile, anti-Semitic environment on the KSC campus," Kaspers was unlawfully retaliated and her employment terminated for her opposition of anti-Semitism. Gilliam (Black) complained to KSU-president: "I have decided to write to you in order to bring you abreast of the racially motivated negative acts that minorities are confronted with at Kennesaw College."
7. Tiwari had to distance himself from racial-committees, since Tiwari was fully convinced that Tiwari's support for well-qualified Jews/minorities goes against the wishes of anti-Semitic KSU-agents who had begun to accelerate the pace of retaliation against Tiwari.
8. Tiwari had to distance himself from racial-committees upon learning that Gilliam (Black) and Park (Oriental) were denied tenure, while grossly unqualified Ingram and Tutterow had been granted tenure with no publications.
9. Tiwari had to distance himself from racial-committees upon observing that gross-deficiencies of Caucasians were being covered up with glowing support letters written by KSU-agents, while glowing-accomplishments of Tiwari and Jews were being derided and downplayed. [Curley is deficient in 67% of the area with poor teaching and no publications at KSU, Moore, Schlact, Stivers, Sawyers, and other Caucasians were deficient in over 33% of the areas.)

3. "Multi-level" Selection Process: Reubber-Stamp

KSU-AG-agents have made Fraudulent incorrect-statements with regards to the e "multi-level" selection in that:

1. The so-called "multi-level" process is anti-Semitic and wholly consists of racial KSU-agents and their salary-dependent "employees" who are equally racial.
2. These "multi-level" steps are not independent of each other.
3. KSU-agents have constantly used and abused such "multi-level" committees to retaliate and discriminate against Plaintiff and Jews. 4 of the 7-steps wholly consists of retaliating KSU-officials; the remaining 3 steps wholly consists of the subordinates of retaliating KSU-officials to whom these subordinates owe their jobs, salary, and promotion; 50% of SBA-PAC consists of subordinates appointed by retaliating Dean; 50% of KSU-PAC consists of KSU-administrators; KSU-officials have improperly intervened in the department-PAC to retaliate against Tiwari..
4. Gilliam (Black) who has served as Chair of SBA-PAC and Chair of KSC-PAC himself raised concerns about the presence of discrimination in the process of promotion and tenure ("I have decided to write to you in order to bring you abreast of the racially motivated negative acts that minorities are confronted with at Kennesaw College."
5. Kaspers, a former KSU-official, complained about the anti-Semitic nature of the so-called "multi-level" selection process "Jews have been underrepresented and the victim of religious discrimination and a hostile, anti-Semitic environment on the KSC campus,"

"multi-level" Committee-Process is of Grave Public Concern (Supreme-Court issue)

Defendants should be denied any relief on the ground of "multi-level" committee process (Rubber-stamping):.

1. Jewish-victimizers in Germany had their misdeeds approved at all the Fuhrer's multi-committee-levels (Mescon may vouch for that).
2. Blacks were traded as slaves/commodities, and the act of which had been approved at all the multi-committee-levels (Thurbert E. Baker may vouch for that). During the Apartheid era, South-Africa even had a multi-level legal-system called

department of Justice (?) – making a mockery of the word "justice."

3. Founding-fathers of our country (George Washington) saw that the denizens of this country were denied their civil-rights at all the "multi-committee-levels" of the British-system, including multi-level-courts-levels. "In every stage of these oppressions, we have petitioned for redress in the most humble terms: Our repeated petitions have been answered only by repeated injury." Tiwari has pointed-out the retaliation-discrimination waged against him and Jews in the most humble forms to KSU-agents. The combined forces of KSU-AG-agents and the salary-dependent multi-level-committee members have repeatedly violated Tiwari's rights and have engaged in intimidation, harassment and defamation of Tiwari's reputation and name across the country. Which KSU-Caucasian would claim with honesty that he/she deserves to be a full-professor relative to Tiwari –Could Rugg say that, given the fact that Rugg himself has gross-deficiency in all of the promotion-areas? .Could Siegel say that, given the fact that Siegel has gross-deficiency in all of the promotion-areas?
4. Obese-people have been treated as sub-humans at all multi-committee-levels (TV-level, Radio-level, Newspaper-level, social-level, political-level, employment-level). Susan L. Rutherford, Dennis Dunn and Tutterow may vouch for that).
5. There was a time when inferior-status of women was approved at all multi-committee levels (Rebecca J. Miller may vouch for that)
6. It appears that adultery has been approved at all multi-committee levels (Mike-Bowers and Larry Flynt may vouch for that)
7. Inferior status given to older-people by all multi-committees (Betty Siegel may vouch for that)
8. Inferior status is given to short-people by all multi-committees (Rugg, Mescon, may vouch for that)
9. KSU-AG-agents (in collaboration with attorney-general office) claim that Tiwari does not deserve promotion because his promotion was denied by all the seven-committees:

Seven-steps is a "sham" operation

4 of the 7-steps wholly consists of retaliating KSU-officials; the remaining 3 steps wholly consists of the subordinates of retaliating KSU-officials to whom these subordinates owe their jobs, salary, and promotion; 50% of SBA-PAC consists of subordinates appointed by

retaliating Dean; 50% of KSC-PAC consists of KSU-administrators; KSU-officials have improperly intervened in the department-PAC. Defendants must be denied any relief under the cover of "multi-level" committees (or rubber-stamping processes) which works at the behest of retaliating KSU-administrators. Could Nazis have been granted relief at Nuremberg because Nazis had their deeds approved by all the "multi-level," committees?

4 of the 7 committees (most of the seven steps) were one-man committees to whom Tiwari had complained of discrimination and who were retaliating against Tiwari and hence their decision on his promotion is null and void.

The 5th committee, University-PAC, had more than 50% administrators (Deans) who were biased against Tiwari, because Tiwari had complained of discrimination to administrators (the rest 50% consisting of faculty were salary-dependent on administrators and they had everything to gain from voting against Tiwari). Since over 50% of the KSC-wide PAC consists of KSU-administrators, and the rest consist of the regular faculty who cannot afford to go against the wishes of the KSU-officials who make decisions about their annual-salary raises.

The 6th committee, CBA-PAC, has 50% of its members who were appointed by the Dean and who were dancing at the tune of their master Mescon, who was retaliating against Tiwari. Since 50% of the SBA-PAC members are hand-picked by Dean Mescon who are the staunchest supporter of Mescon and who will do anything to please him; the rest 50% of the PAC members are salary-dependent on administrators and are the mercy of the Dean and Chair for their annual salary-raises.

The 7th committee department-PAC members are salary-dependent on Chair-Dean-VP-P and these PAC-members had already been bribed/tainted by Chair/Dean through monetary incentives: by sending a memo that "we will benefit from not having to support promotions," by granting appreciation-awards, higher pay-raises (Ingram got $7,000 raise + part time job to her husband), and promotion (Tutterow had been promised Chair's position). Department-PAC consists of individuals with Ph.D. in Tiwari's field of expertise; these PAC-members had unanimously and strongly recommended Tiwari for promotion in 1992. But after the active campaigning by Dean and Chair against Tiwari's promotion,

these department-PAC members decided to act on the wishes of Dean and Chair and deny Tiwari a promotion in 1994 and 1995. The majority of the department-PAC during all the three promotion processes consisted of the same very individuals who unanimously and strongly recommended Tiwari's promotion in 1992, but after the Fraudulent and unlawful interference by the Dean and Chair, these PAC members denied promotion by concocting "pretextual" grounds; notwithstanding that Tiwari had performed even at a higher level than that in 1992 when Tiwari had been approved unanimously and strongly. (the promotion criterion per KSU-manual has remained unchanged during all the promotion periods.).

Almost all of the PAC-members are academically inactive (no publications and no professional activities, see their resumes) and thus they have no professional mobility, and, they are forced to stay at KSU. Their entire future career is at the whims of the retaliating Chair and Dean. At a small teaching institution such as KSU, it is so simple for the retaliating Dean, Chair, and VP to manipulate and intimidate PAC-members to vote against Tiwari.

At KSU, a small teaching institution, promotion is like close knit family affair run exclusively at the whims of retaliating Chair, Dean, and VP; anyone going against the wishes of these officials will face retaliation-discrimination (such as Candace Kaspers). KSU is a school where Caucasians such as Curley, Sawyers, Moore, T.P. Hall, Stivers, Schlact, Rugg, and others with virtually no-publications and no-professional activity have been promoted, while Tiwari with numerous publications and numerous contributions to the field of finance has been rejected three times by the "sham" promotion-processes instituted by the retaliating Chair, Dean, and VP.

If salary-dependent "multi-level" committee members of Nazis could approve such extreme acts against humanity, it is quite easy for KSU-agents to have their "multi-level" committees approve their wishes to discriminate and retaliate against Plaintiff and Jews..

Unlike a large research-oriented university such as UGA, where PAC-members are highly accomplished individuals who cannot be easily manipulated by the retaliating administrators, KSU is a small community school (with inactive faculty), where it is so easy

for the retaliating Dean, Chair, and VP to manipulate and intimidate PAC-members to vote against Tiwari. The so-called seven-steps in the promotion process at KSU is indeed a sham-operation for the retaliating Chair, Dean, and VP to hide behind. Even the construction of the so-called seven-step review process at KSU is so diametrically different from UGA and is highly skewed in favor of the retaliating KSU-officials. In stark contrast to the UGA, most of the seven-steps at KSU consists of administrators (Tiwari's retaliators):

Under the KSU's so-called multi-level-promotion-process only Caucasians or their anti-Semitic allies have gotten promotion or will ever get promotion. No faculty who has filed a complaint with the EEOC and federal court against KSU has ever received a fair treatment at KSU. Tiwari has never received nor will ever receive a non-retaliatory and non-discriminatory promotion-process through the so-called seven-steps, as long as most of the committees (4 out of 7) consists of retaliating-administrators, and the other three steps consists of retaliating-administrators, individuals appointed (not elected) by the retaliating-administrators, and/or individuals who are salary-dependent on the retaliating-administrators.

The enlightened jury will find that indeed retaliating Chair, Dean, and VP engaged in vote committee manipulation and ran a sham promotion-process through a pseudo seven-steps.

Are there really 7 committee levels

If VP & P are only "sign-off" officials, then by definition they do not participate in the portfolio evaluation promotion-process; therefore the committee-le4vels are reduced to only 5 levels.

Per KSU, University-wide PAC is unable to compare business-faculty from science-faculty, since they are not similarly situated, hence this committee is redundant as it makes no portfolio-evaluation. Now the committee-level is reduced to 4 levels [i.e., department, chair, CBA, Dean].

Since KSU insists upon similarly-situated, only finance-teaching faculty can be compared with Tiwari. This reduces the committee levels to only 2 levels (department and chair). The department peers are the only once with Ph.D. in the area, and, therefore they

are the only ones uniquely qualified to judge the finance-scholarship, finance-teaching, and finance-leadership of Tiwari.

Mescon considers himself above all the committee levels: "I am the state and my will is the law." Mescon considers himself as the first-level as well as the final-level in the promotion process. In his letter dated January-7, 1993 to Tiwari, Mescon used the word "deny you promotion," clearly indicating that if he "denies" no one can approve. Every committee-level can either recommend or not-recommend, No committee level ever uses the word "deny," because one committee has no authority to deny. Only board of regents have the sole power to "deny." Mescon is only one of the seven-levels, and he cannot use the word "deny" even if he were to be ultra cocky. Since Mescon used the word "deny you promotion," Mescon feels that he is the final authority, with complete disrespect for other 6 levels. Tom Moore was rejected by his own department and SBA, but Mescon granted him promotion, while Tiwari was unanimously and strongly recommended by his department, and yet Mescon "denied" promotion to Tiwari.

Mescon (dean) believes that he is above all the seven-step committees and that Mescon can "deny" or promote anyone at his whi. Mescon is "denying" promotion to Tiwari who has been unanimously and strongly recommended by the jury of his department-peers and Chair, while Mescon is recommending promotion of Tom-Moore, who was rejected by the jury of his own department peers. When there is such a cockiness on the part of the Dean (Fuhrer), then the seven-steps is a laughing "JOKE."

Ken Gilliam (Black) and John-Mbaku (Black) are the only two faculty from the CBA who had been approved for tenure by the first 4 levels, but were denied by Rugg and Siegel; thus they are not simply sign-off officials. It is also a classic example where Blacks and other minorities have been targeted for discrimination in the employment process by VP and P..

Same committee members during 1992-94-95

One of the promotion-committees (department-Chair) consisted of the same individual, Mike Curley during all the three promotion processes, 1992-93, 1994-95, and 1995-96. Curley applauded Tiwari and wrote a glowing recommendation letter in support of Tiwari's promotion in 1992 (perhaps Curley realized that it was too soon to engage in unlawful retaliation), but then in 1994 and 1995, Curley denied promotion and made retaliatory and

disparaging remarks about Tiwari, notwithstanding that Tiwari had performed even at a higher level than that in 1992 when Tiwari had been approved by the Chair. (the promotion criterion per KSU-manual has remained unchanged during all the promotion periods.).

The majority of the department-PAC during all the three promotion processes consisted of the same very individuals who unanimously and strongly recommended Tiwari's promotion in 1992, but after the retaliatory and unlawful interference by the Dean and Chair, these PAC members denied promotion by concocting "pretextual" grounds.

1992-PAC: Goodwin, Gilliam, Bumgarner, Sabbarese, Kochman, Anderson, Henssler

1994-PAC: Goodwin, Gilliam, Bumgarner, Sabbarese, Kochman, Park

1995-PAC: Goodwin, Gilliam, Bumgarner, Sabbarese, Brotman, Ingram, Tutterow

(the promotion criterion per KSU-manual has remained unchanged during all the promotion periods, so it does not matter who is in the committee, these members are supposed to be guided with objectivity.).

Kenneth P. Gilliam (Black) who served as Chair-SBA-PAC-1992/93 and Chair-KSC-PAC-1995/96 himself raised concerns about the presence of discrimination in the process of promotion and tenure in 1987, when Gilliam (Black) was denied tenure. ("I have decided to write to you in order to bring you abreast of the racially motivated negative acts that minorities are confronted with at Kennesaw College." (letter dated February 6, 1987 from Kenneth P. Gilliam (Black) to Dr. Betty L. Siegel, KSU-President). Paradoxically, KSU-agents have presented the same Gilliam (Black), a salary-dependent employee of theirs, as a witness who now claims that there is no discrimination. Therefore, the court must deny any relief to defendants under their preferred proffered-cover of "multi-level" process, since the Chair of such committees [Gilliam (Black)] himself has been on the record claiming the presence racial discrimination on the KSU campus. The court should neither believe KSU-agents nor their salary-dependent employee [Gilliam (Black)].

No Independence in Multi-levels

Unlike UGA, the PAC at KSU is not independent of each other, since some of PAC-members are common to all the committees. Some committee members from department-PAC also served in the SBA-PAC and KSC-wide PAC. In 1995, for example, Ingram and Tutterow served on both the department-PAC and SBA-PAC, while Gilliam served on both the department-PAC and KSC-wide PAC. Thus these overlapping committee members convey the negative messages about Tiwari to subsequent higher-up committee levels.

on Multi-level committee process

Randy Goodwin urged Tiwari to file a discrimination lawsuit, when he witnessed that Tiwari was being discriminated in the multi-level PAC process (see Tiwari's affidavit). Goodwin's testimony is important because he has served as the Chair of all the multi-level committees].

Ken Gilliam (Black) complained about PAC multi-level process resident: "I have decided to write to you in order to bring you abreast of the racially motivated negative acts that minorities are confronted with at Kennesaw College." [Gilliam's is important because he has served as the Chair of all the multi-level committees].

Candace Kaspers complained about multi-level process, "Jews have been underrepresented and the victim of religious discrimination and a hostile, anti-Semitic environment on the KSC campus," Kaspers, was unlawfully retaliated for her opposition to anti-Semitism [Kaspers testimony is important because she has served as a member of many multi-level committees]

Under the cover of multi-level process, Candace Kaspers was unlawfully fired from her job by the board-of-regents. The federal-court Court awarded her $750,000) (civil-action 95-954-wco)

Under the cover of multi-level process, Jan Kemp was unlawfully fired from her job by the board-of-regents. The federal-court found two officials personally liable in their individual capacity (Court awarded her $700,000) (ref: 651 F. Supp. 495; 1986; civil-action C83-330A)

Multi-level-process argument is mute because these are rubber-stamps for the retaliating Chair/Dean. Gross deficiency of

Caucasians (Curley, Schlact, Moore) are covered up by support-letters by their Caucasian-brethren of the multi-level-process, while glowing performance of Tiwari are derided and downplayed with concocted-deficiencies. The court must not admit any arguments.

promotion criterion remained unchanged

Defendants argument that "Tiwari cannot be compared with those who were promoted at distinct point in time under different circumstances" is fatally-flawed and is a "sham" argument since the promotion criterion (scholarship, teaching, service) of the KSU-manual has remained the same during the promotion-processes of Tiwari and all the Caucasians. By promoting less-qualified Caucasians, it is crystal clear that KSU-officials (and the so-called seven-steps) were not guided by their own published manual/constitution, but they were guided by discrimination and retaliation against Tiwari. There are many inconsistencies in the statements made by seven-steps and KSU-officials; the following is only one of the evidences:

1992-PAC (department/Chair) unanimously and strongly recommended Tiwari's promotion

1994-PAC (consisting of virtually the same faculty members and the same Chair) rejected Tiwari's promotion notwithstanding that Tiwari had performed even at a higher level than that in 1992 when Tiwari had been unanimously approved by the faculty and Chair.

1995-PAC (consisting of virtually the same faculty members and the same Chair) found Tiwari commendable and notable in scholarship and teaching, but rejected Tiwari's promotion on the pretext of "service," notwithstanding that Tiwari had performed even at a higher level than that in 1992 when Tiwari had been unanimously approved by the faculty and Chair.

During 1992-93-PAC process, Rugg, Siegel, Mescon, regents, and other steps reject Tiwari's promotion on the pretext of "scholarship," notwithstanding that the only experts qualified to judge the scholarship in the field of finance/economics were Tiwari's own peers and Chair, who had unanimously and strongly recommended Tiwari. Mescon (management), Rugg (education), Siegel (psychology), have No knowledge of the field of finance/economics to come up with a pretext on Tiwari's scholarship.

The supreme guiding force for the promotion is the KSU-manual and KSU-constitution irrespective of the number of steps, time, or circumstances (it does not matter whether there are seven-steps or hundred-steps); the same criterion must be used for Caucasians as well as Tiwari. The supreme guiding force is the U.S. constitution and KSU-constitution which ban retaliation and discrimination irrespective of the time and circumstances

False-Statements made by KSU-officials to EEOC

Prior to filing the EEOC-charge in March-1996, KSU had already determined Dr. Tiwari's scholarship to be "superior," "commendable and notable" "clearly notable," "you are indeed a scholar," however, since Tiwari filed his complaint with the EEOC and the federal court, KSU is struggling to contrive to the effect that Tiwari is non-notable (e.g. refer to the 1996-KSU-position statement made to EEOC which struggles to fabricate contriving grounds on the "refereed" issue). In other words, if Dr. Tiwari does not complain to the EEOC, then he is "superior" in scholarship, but if he complains to the EEOC, then he is no longer "superior" -- such are the blatant retaliation waged against Dr. Tiwari by KSU-officials..

In retaliation against Tiwari, KSU's 1996-position-statement made to EEOC, KSU claims "All criteria for promotion and salary adjustment have been applied fairly and impartially." If that is so then by what academic-criterion (scholarship, teaching, professional-leadership, professional-service, service), is Dr. Tiwari any inferior to the following Caucasians promoted to full-professor: T.P. Hall, Mike Curley, Jerry Sawyer, Tom Moore, Ralph Frey, Rick Mathisen, Gene Henssler, Alan Schlact, Bonnie Stivers, Tom Pritchett, Harry Lasher, John Grashof, Ladd Kochman, Billie Ann Brotman, Craig Aaronoff, Joan Preston, Rodney Alsup, Tom Miller, Betty Siegel, Tim Mescon, Ed Rugg, Don Forrester, Deborah Wallace, Herbert Davis, Julia Perkins, Tina Straley, Lois Muir, Nancy King, Beverly Mitchell, Gird Romer, Patricia Reggio, Steve Scherer, and other Caucasians.

KSU-officials (Mescon, Rugg, Siegel, Curley, Tutterow) had "a very difficult time hearing, understanding, and accepting the evaluative and constructive" private concerns about the prevalence of racism against the people of perceived inferior race.

Procedural Violations

1. Internal "or" External:: 1995-PAC (including Ed Rugg, VPAA, whose "responses" are a part of KSU-manual) violated the procedure by distorting the KSU's own promotion-directives about the service which can be internal OR external. The service can be internal OR external as is clearly indicated and interpreted by Ed Rugg, "Notable service for some will occur at the department and school levels and for others it will involve campus-wide activities **OR** civic and professional groups"
2. The PACs for 1992-93 and 1994-95 violated the published promotion-criterion by stating that Tiwari does not have sufficient publications, notwithstanding that per KSU-manual "scholarship is not limited to publications" at KSU. Publication is never a criterion for promotion at a small KSU institution which is primarily a teaching-school. Publication is not an issue let alone be quality of publication. Neither in quality nor in quantity any Caucasian can match Tiwari. Arguendo even if Tiwari had no publications, still his scholarship is far superior to Caucasians within the purview of the KSU-manual definition of scholarship. Thus the issue of "quality/quantity of publications" was a hoax fabricated by retaliating KSU-agents.
3. KSU has violated its published promotion criterion by promoting Caucasians who have no publications and concocting a "publication" issue for Tiwari for PACs of 1992-93 and 1994-95.
4. 1995-SBA-PAC violated its own published promotion-directives by stating that Plaintiff's professional-service in included in his "scholarship." (it is contrary to the published SBA-promotion-guidelines that clearly states that professional service is service rather than scholarship; Service is a composite of scholarly, professional, and institutional.).
5. 1992-SBA-PAC violated promotion-guidelines by denying promotion to Plaintiff by alleging that Plaintiff is deficient in publications, while at the same time recommending Alan-Schlact for promotion. Up until 1992, Alan Schalct had no publications, while Plaintiff Tiwari had a long list of publications, and according to the 1992-*Financial Literature Index*, Plaintiff had more publications than all of his finance-colleagues (including Henssler, Curley, Brotman, Kochman). Under the purview of the KSU-manual definition, Tiwari's scholarship has been (and still is) at a level far greater than any

Caucasian. When Plaintiff complained of this blatant discrimination to Dean Mescon, the Dean retracted back by not recommending Schlact at the next level for lack of scholarship. Mescon was so prejudiced against the Plaintiff that Mescon wanted to deny promotion to Plaintiff at any cost even if that meant temporarily halting the promotion of Schlact to give him some pretextual-rationale. Mescon in an outright display of racism chose not to recognize Plaintiff's outstanding scholarship credentials.

6. 1992-PAC violated the promotion-guidelines by promoting Jerry Sawyers who had virtually no publications, while denying promotion to Plaintiff who had more publications than any Caucasians.
7. 1994-PAC (departmental October 13, 1994) violated the promotion guidelines by singling out Tiwari and asking Tiwari to "co-author research papers and grant proposal with faculty colleagues" as a service/leadership. No where in the published promotion-guidelines, it is mentioned that a faculty must co-author his papers in order to get promoted. In addition to being a procedural violation, the co-authorship demand was also Fraudulent and discriminatory, as such demands were never made from the promoted Caucasians (Curley, Miller, Henssler, Kochman, Brotman); these promoted Caucasians have never co-authored with their departmental faculty-colleagues at KSU prior to their promotion, nor have they done so after the promotion. Tiwari was informed by Kochman that Curley had asked Bumgarner to insert such demands in her letter (a clear violation of the required independence between the Chair and PAC-members). The October-13, 1994 PAC-memo further goes on to make singular demand from Tiwari "work with younger faculty, helping them with their research and/or teaching;" such demands were never made from Caucasians; and, notwithstanding the fact that Tiwari had helped numerous faculty in their teaching and/or professional development including Bumgarner, Tutterow, Brotman, Curley, Anderson, Tompkins, Kochman (see contents Kochman's recommendation letter).
8. Chair Curley improperly intervened to cancel the scheduled second 1994-PAC meeting to reconsider Tiwari's promotion: There is a memo sent out by 1994-PAC-Chair Mary Bumgarner (dated around 10-15 October, 1994) to all PAC-members informing them of the scheduled second meeting to reconsider Tiwari's promotion. Just about 5 minutes before the scheduled second meeting, Chair-Curley went and asked

Goodwin, Kochman, and Bumgarner to cancel the second meeting. At the urging of Chair Curley, the second meeting was instantly canceled. Kochman and Goodwin immediately informed Plaintiff that at the behest of Curley, the second meeting has been canceled. In clear violation of KSU-manual, Mike Curley ordered the PAC-1994/95 members not to hold the second meeting to reconsider the promotion of Dr. Tiwari (lest the members faced severe consequences in terms of their annual pay raises). Mike Curley promised the PAC members that he would write a very nice letter supporting the promotion of Dr. Tiwari and that he would secure the promotion for Dr. Tiwari as he had done in the tenure-case of a Caucasian (Virginia Ingram). The PAC-members fearing reprisals from Chair Curley became concerned. Mike Curley reneged on his promise to all the PAC members by not only not supporting Dr. Tiwari's promotion, but also by writing a nasty derogatory and defamatory denial-letter (October-24, 1994) and inserting it in Dr. Tiwari's portfolio and distributing the letter in advance to all the administrators and other KSU-committee members.

9. In clear violation of KSU-manual, Mary Bumgarner, 1994-PAC-Chair allowed unprofessional conversation during the meeting to continue. Not only did she allowed, but she actively participated and initiated such unprofessional discussion. The PAC's function is to consider academic qualification (research, teaching, service) and for a street-gang talk against Dr. Tiwari
10. In clear violation of KSU-manual during the 1994-PAC, Chair and Dean refused to disbar a faculty who was hostile to Plaintiff. Plaintiff had a meeting with Dean and Chair to disbar the faculty, but Chair and Dean used the Oriental faculty to deny promotion to Plaintiff. The Chair and Dean flatly denied the request of Dr. Tiwari. The Chair and Dean had found the perfect vehicle to retaliate and deny promotion to Dr. Tiwari. They used the Oriental to further their ultimate goal of denying the promotion to Plaintiff.
11. PAC violated its procedures by ignoring the gross deficiencies in teaching (with poor teaching) of numerous Caucasians such as Curley, Brotman, Kochman, but imposing the "internal-service" pretext for Tiwari. Kochman had gross deficiency in teaching (prime criterion for promotion, since he refused to teach MBA-finance courses, yet even such fundamental teaching deficiencies (deficiency in 25% of the area) were ignored for Kochman, but for Tiwari internal-service (a mere 8% of the area) was highlighted to deny promotion.

Fundamental Errors in Magistrate's R&R

1. **Error: (1992-Mescon-PAC-letter against Tiwari was retaliatory-discriminatory** should not weigh and has no merit): Judge-magistrate has quoted only the retaliatory-letter of Mescon and did not consider the glowing letters written by other committees (department-PAC-1992 and Chir-Curley-1992) in support of Tiwari. Mescon is only one of the seven-levels whose views about quality or quantity should not matter because Mescon does not even know finance. Tiwari's department-peers are the ones who have Ph.D. in finance/econ and only these peers are the ones who can judge the quality of Tiwari's publications; and these peers unanimously-strongly recommended Tiwari and commended for his research: "you are indeed a scholar." Alas, Judge is only and only giving weight to the retaliatory wordings of one single person (Mescon), but not weighing at all the views of Tiwari's 10 peers who have Ph.D. in finance/econ. (at Summary-Judgment stage, Judge's job is not to weigh the evidence.) . ++++++++

   Mescon does not even know what is a quality-journal and what is a non-quality. During deposition, Mescon said he had never heard of **JFQA** (Journal of Financial and Quantitative Analyis) implying that the JFQA is of inferior quality, because Mescon mistakenly believed that Plaintiff had publications in JFQA and it would be in the interest of KSU to deny that JFQA is of any quality. It just so happens that Tom Miller was given full-professorship based upon his 2 co-authored articles in JFQA. Thus according to Mescon's deposition, Tom Miller had published in a vague journal which Mescon has never heard of. Thus according to Mescon, it is OK to give Caucasians full-professorship with publications in unknown journals, but for Tiwari quality was made an issue in 1992-PAC-letter of Mescon. If Mescon does not know what is a quality-finance journal and what is not, then his 1992-PAC-letter was simply retaliatory and discriminatory, given the fact that Tiwari's own peers had unanimously and strongly recommended him for promotion by stating that "you (Tiwari) are indeed a scholar;" [Tiwari's peers have Ph.D. in finance/economics who are the only ones uniquely qualified to judge what is quality-publications in finance journal, while Mescon has Ph.D. in a different field (management) who is not even qualified to judge finance/economics journal]. While for Tiwari, Mescon was making quality-journal an issue, in the

same year of 1992-93-PAC, Mescon recommended the promotion of Jerry Sawyers and others who have no publications (quality or non-quality, refereed or non-refereed). This clearly proves that Mescon's retaliation and discrimination against Tiwari which carried over for 1995-96-PAC and which carries over to date.

2. error (Extensive-Publications): Judge-Magistrate say that Plaintiff has **extensive pub**lications between 1992-95 and has published in quality journals (their judgment is based on retaliatory-letters of KSU-agents). The judges conclusion is incorrect and erroneous. Plaintiff has extensive publications as of 1992; one would find that Plaintiff has virtually the same level of publications and in similar-quality of journals as of 1992. Between 1992-95, Plaintiff has published a few more articles and in similar-quality-journals, but in an Ocean that is already saturated with water, adding a few more drops of water would not make it an extensive-Ocean; the Ocean is extensive before-1992 and after-1992.

3. error (Downgrading of annual-evaluation): Judge-magistrate has made an error by quoting Tutterow that "**at-expectations**" is not a hurdle for future promotion. Judge ignores the fact that Tutterow is only one of the seven-levels; the other six-levels will claim that if Tiwari was not promotable when he had "above-expectations" evaluations, then Tiwari must not be promoted with an inferior rating of "at-expectations."

4. error: Initial-**Lawsuit para 83**, 82, 81 were not addressed by Judge: Judge-magistrate did not even address the retaliation-charges itemized in paragraphs 83, 82, 81 of the initial lawsuit.

Page-by-page List of Errors in Magistrate's R&R

page-20: Brotman has Ph.D. in economics NOT in finance as the judge writes,. there were 2 Caucasians (Brotman and Kochman) promoted to full professor not just one as the judge writes.

Page-21: KSU claims promotion is Objective, rather than subjective as judge writes.

Page-23: During 1992-PAC, Schlact had no refereed publications and yet he was "glorified" by SBA-PAC, while Tiwari had substantial refereed publications at a level greater than his

finance-teaching faculty, and yet the same committee consisting of Caucasians (a Black as token Chair, who had complained racism himself) is making incorrect statement that Tiwari lack's scholarship.

In order to get a potential discrimination-case dismissed, all an employer has to do is to write "disparaging" letters and put it into Tiwari's file, while at the same time write "glowing" letters in praise of less qualified Caucasians (Curley, Hall, Moore, Sawyers, Pritchett, Mathisen had virtually no publications). For example, Tiwari had more refereed publications in finance than Caucasians per 1992-Heck-Finance-Index, yet KSU has incorrectly stated that Tiwari had no refereed publications during 1988-92. Schlact has virtually no refereed publications, and yet he is being "glorified" by KSU. Hall has no terminal degree and he is being glorified. KSU-officials also made disparaging remarks in the tenure/promotions of Jews (Brotman for Chair`, and others), Blacks (Gilliam and Mbaku) and Orientals (Park and Chan), while at the same time glorifying Caucasians (Tutterow and Ingram) who had virtually no publications.

Page-23: No, department-PAC for 1992 and 1994 consisted of the same faculty except one. Mr. Park was the only different person, who was being used as an Asian-instrument by the Dean and Chair to rationalize retaliation against Tiwari. Park had physically and verbally threatened Tiwari (see depo 252-258), and Tiwari had several conferences with Dean/Chair asking them to remove Park from the committee and that Park not be used as a salary-dependent conscripts by bribing him through the promise of higher salary-raises and appreciation award.

1992-PAC: Goodwin, Gilliam, Bumgarner, Sabbarese, Kochman, Anderson, Henssler
1994-PAC: Goodwin, Gilliam, Bumgarner, Sabbarese, Kochman, Park
1995-PAC: Goodwin, Gilliam, Bumgarner, Sabbarese, Brotman, Ingram, Tutterow
(the promotion criterion per KSU-manual has remained unchanged during all the promotion periods, so it does not matter who is in the committee, these members are supposed to be guided with objectivity.).

page-24: serving on committee is not the sole criterion for service; there is a long list as given in the SMF. Further, when Tiwari served on committees he discovered that the decisions were made on racial-grounds. For example (see depo: 79-80; 248-249) Brotman (Jew) and Spencer (Jew) were denied jobs. See also details below, entitle: Tiwari distanced from "racial-Committees," the so-called "seven-steps" Decision Process Instead, Tiwari provided service through the fundamental-mission "student-advising" There are several Caucasians (Miller, Mescon, Hennsler, Mathisen, Hall) who had no internal-service, yet they were given professorship.

Page-24-25, 29 (error): It is an error-statement; criterion for promotion has remained the same at all those years 1992-96 or 1988-96, it has not changed, and everyone promoted to professor had to meet the same published criterion. In fact KSU is adamant that everyone has to meet the same criterion. This is a grosslyerroneous statement.

Page 26, 7, 8: It is an incorrect statement that "Plaintiff failed to publish any refereed articles between... 1988 and 1992." Tiwari had several refereed publications between 1988-92. Moreover, per 1992-Heck-Finance--Index, Tiwari had more publications than Curley, Brotman, Kochman, Henssler. When adjusted for co-authorship, even Miller had less publications than Tiwari,, per 1992-Heck-Finance-Index

Page-26: Tiwari has more quality publications than Curley, Kochman, Brotman, Henssler, and even Miller per 1992-Heck-Finance-Index. "quality issue is a pretext."

Page-27: The judge is blindly drawing upon Curley-1994-letter and Mescon-1993 letter; these letters were written in retaliation. Through such retaliatory-letters Chair/dean "downplay" the achievements of Tiwari and glorify less qualified "Caucasians" such as Hall, Moore, Sawyers,...

page-28: confines of Budget? Promotion does not take but mere 5% of base salary; budget was never an issue for promotion at KSU.

page-28: KSU promoted **Tom Moore**, who had been rejected by Department-PAC and College-PAC; that is Moore was rejected by the jury of his own department peers, the peers who have Ph.D. in Moore's discipline. Tiwari on the other hand was unanimously and strongly recommended by the jury of his peers who have Ph.D. in Tiwari's discipline. Moore has no publications, while Tiwari had more refereed publications than everyone in finance promoted to professor(per Heck's Index).**T.P. Hall** does not have Ph.D., yet he was given professorship, while Dr. Tiwari, (Ph.D.) was denied professorshuip

Page-28 "multi-tiered, staffed by those who know best" (no multi-level process is a sham operation.)

page-30, footnote-3: When Caucasians were hired as full-professors, they had less scholarship than when Tiwari was denied professorshuip

page-31: Friction was created by Dean/Chair to retaliate against Tiwari by enticing the faculty through the promise of salary-raises.

Page 33: 1996-98, Curley has been a regular faculty for 1996-98, he is not a Chair, He does NOT teach finance, yet he receives $25,000 more.

Page-34: Brotman (economics, ph.d.), Curley (economics, ph.d.), Miller (operations, ph.d), all make finance-salary. Curley teaches only economics courses. Brotman taught only real-estate courses until her promotion, but now she is teaching one finance. On the other hand Tiwari had taught more courses in finance (both MBA and BBA)) than any finance-salaried professor.

Page-34, footenote-6: the judge has made a gross-error here. Promotion makes only 5% difference in salary, but Curley, Brotman, Kochman are making 20% more than Tiwari.

Page-35, 37, 38: Tiwari had taught only finance courses, published only in finance, and has specialized only in finance at the behest of KSU. Tiwari's post-doctoral specialization through finance-professional association far exceeds those of any Caucasians.

page-39: Beginning, fall-1998, KSU in retaliation has downgraded Tiwari's finance-456 to econ-4210. Tiwari is the only person who has taught fin-456 for 10 years. The course was downgraded to economics this Fall-1998 to give an impression that Tiwari will be teaching one economics rather than finance course. List all the finance courses again that is taught by Tiwari; only occasionaly he has taught "money and banking" which is also a de-facto finance course. Tiwari does not teach money and banking on a regular basis, he teaches only finance on a regular basis.

Page-45: all items listed in Complaint 81-83. Retaliation Downgrading of Finance 456

Page-22: speaking-skills, quality of publications (Cornell University)

The judge is providing more pretext to KSU by comparing Tiwari with Cornell University promotion criterion. In order to favor defendants, the Judge is drawing a comparison with Cornell-University case where quality of publications is required, because Cornell is a research-oriented school and is one of the best in the world. KSU is a teaching-schools where publications is secondary and quality has never been an issue. Moreover, Tiwari has shown that he is superior to all the Caucasians in quality-publications as evidenced by Finance-literature-Index, which KSU has already admitted.Tiwari does not have speaking-skill problems. Tiwari is an outstanding communicator in the classroom and professional arena. KSU has certified that Tiwari has commendable-notable and outstanding teacher (thereby indicating that he has outstanding speaking-skills) ("scholarship is not limited to publications" (per KSU-manual), very different from Harvard and Cornell). **Service** (which is not just committee-work)

Page-31-32: Magistrate finds: animosity and politics were reasons for promotion-denial

On page-31-32, Magistrate writes, " it appears that friction and hostility developed ... (see defendant Exhibit-4: Curley's retaliatory-letter)... one can be denied promotion in academic... [if] has just failed in departmental politics and has not been able to muster sufficient support." Basing upon the retaliatory-letter of Curley, Magistrate-Magistrate claims that Tiwari qualified, however, Tiwari was denied promotion because of fiction-hostility-politics that developed after the 1992-93-promotion-process, but Magistrate finding cannot withstand analysis: (1) why

was Tiwari denied during 1992-93 when there was no friction-hostility-politics, (2) PAC takes votes only on scholarship, teaching, and service; PAC is not supposed to take vote on animosity and politics – thus a procedural violation, (3) KSU-agents never used friction-hostility-politics as the pretext, they rather used a false and fraudulent pretext of internal-service-deficiency, (4) Magistrate, a public trustee, should attempt to eliminate politics from academia rather than condone it. +++++ Most importantly, Magistrate appears to conclude that it was friction-hostility-politics that was the real cause of promotion-denial to Tiwari, and not any deficiency (the internal-service deficiency pretext used by KSU). ++++ Magistrate appears to find that KSU-agents have perjured themselves by using a false and fraudulent pretext of internal-service, because the real reason for promotion-denial was politics and animosity. Yet, Magistrate did not penalized his Caucasian-brethren (KSU-agents) for perjury and for submitting false and fraudulent pretext of internal-service. KSU-agents should have simply stated that real reason for promotion-denial was politics and animosity.

Magistrate is indecisive and confused; does he know what he is talking about?: In RR, on page-20, Judge claims that Plaintiff is qualified, but on page-31, Judge contradicts himself by stating Plaintiff is not-qualified. How can the Plaintiff be qualified and not-qualified/deficient at the same time.

On Page-20 of RR, Judge is acknowledging that Plaintiff is qualified for promotion "Plaintiff has established 3 of the 4 elements necessary to establish a disparate treatment ...."

On Page-31 of RR, judge turns around and contradicts himself by claiming that because Plaintiff is deficient in "internal service," (an allegation Plaintiff vehemently denies), Plaintiff is not qualified for promotion.

"Judge's function is not to weigh the evidence." In the light of the evidence presented by Plaintiff (procedural violation, inconsistent statements, recommendation letters, promotion of less qualified Whites) Judge's claim to the effect that "it is so one-sided that KSU-management must prevail as a matter of law," cannot withstand the scrutiny of public at large.

Magistrate completely ignored the evidence presented by Plaintiff and simply tailored his reasoning along the retaliation-letter written by Curley from the management-side (KSU's exhibit B-4). Magistrate's RR is full of quotes from the retaliation-letter of

Curley. Magistrate ignored the recommendation letters of better-qualified professors (Henssler, Kochman; both Whites) who strongly recommended Tiwari's promotion. Henssler and Kochman have far superior credentials to vouch for Tiwari's promotion-credentials within the KSU-environment. (Under pressure from Dean and Chair, now Kochman has withdrawn his support for Tiwari, but only internally). All of them (Curley, Henssler, and Kochman) are White; how could the Magistrate-court give preference to Curley's retaliation-letter over that of the support-letters of highly respected Henssler and Kochman.

Curley is not even qualified to write derogatory and retaliatory letters. Curley has no publications at KSU, and was hired with virtually no publications to his credit. Curley has worst teaching evaluations. Curley does not teach finance. Curley did not teach MBA courses prior to resigning as a Chair. During Curley's tenure as Chair, the finance-curriculum shrunk continuously, clearly indicating poor management skills of Curley. Curley discriminated and awarded higher salary to Caucasians.

Henssler is far superior to Curley in scholarship, teaching, and service to vouch for Tiwari's promotion-credential through. Henssler has a Ph.D. in finance. Henssler is a well known academician, practitioner, and teacher around Atlanta and in KSU-community. Henssler is a mentor to the public at large. Henssler has a successful thriving private finance-consulting business. Hensler has his own radio-show on financial-business that comes out every Sunday morning. Curley's qualifications do not even remotely match that of Henssler.

Kochman is far superior to Curley in scholarship, teaching, and service to vouch for Tiwari's promotion credential. Kochman has a terminal degree in finance, while Curley does not.

Judge is giving a classic example of Hitler where Hitler refused to shake hands with Black athlete who defeated "Whites" in Olympics. Apparently, Hitler believed that Blacks were not humans and hence it is barbaric to put Blacks and Whites in the same league. In the same manner, where Plaintiff has shown the evidence that he is far superior to whites, but the Judge is refusing to shake hands with the Plaintiff.

Page-31 footnote-4: Service-Certificate

"Dedicated and Faithful service to KSU for 10 years" were the words used in the certificate presented to Tiwari. How can Plaintiff provide a continuous **dedicated-faithful** service for 10 years and yet be denied promotion on the pretext of "lack of service." Pretext is not believable.

Page-32: Failed in departmental **Politics**

On RR-32, magistrate writes to the effect "...failed in departmental politics and has not been able to muster sufficient support." "Those reasons, even if unfair and not quantifiable, are not unlawful." Once again zealot magistrate is mustering some more points for defendants. Defendants have used other pretext to deny promotion, but never admitted to "departmental politics" as pretext. If "failure in departmental politics" was the reason for promotion denial, then KSU should have clearly stated that in the KSU-manual that "playing politics" and not "real work" is the foremost and number-one criterion to for promotion to full professor. If "politics" becomes the ground for promotion to an academic-rank, then academia is headed for disaster; Judge is a public trustee and should correct it rather than champion it. [Judge based his opinion entirely along the cleverly-crafted retaliation-letter written by Curley (KSU's exhibit B-4).

While on the one-hand, magistrate seems to indicate departmental "politics" as the reason for promotion-denial, while on the other hand, the magistrates favors defendants by seemingly accepting their pretexts that internal-service "deficiency" was the reason. These two reasons "politics" and "deficiency" are mutually exclusive. To deny promotion based on "politics" is of course not unlawful, what maybe unlawful is the incorrect pretexts submitted to the court by the defendants (i.e.. "lack of internal service" and/or "lack of scholarship," and/or "lack of mentoring."). None is unlawful: neither unfair "politics" in academic-promotions, nor unfair "court rulings" in the judicial-system. Defendants have only given various "pretexts," but have never admitted that Plaintiff was denied promotion based on "politics."

KSU-agents have engaged in disparate treatment of the Plaintiff without a doubt: Denying promotion to Plaintiff, while granting promoting to less-qualified Caucasians; paying lower salary to finance-teaching Plaintiff, while giving disproportionately higher salary to finance-teaching Caucasians. Defendants have discriminated and retaliated against the Plaintiff unambiguously and continuously.

The 1992-SBA-PAC denied promotion on the pretext of lack of "publications," while 1995-SBA-PAC came up with a pretext of lack of "internal-service." Whether it is 1992, 1994, or 1995, Plaintiff showed that he has more publications than Whites (per Heck's Financial Literature Index) and that the Plaintiff has far superior "scholarship" than Caucasians within the KSU-manual definition of scholarship; subsequent 1995-SBA-PAC had no choice but to admit that the Plaintiff has "superior" scholarship, but concocted another pretext anyway. [In an amazing display of racial-bias of historic-proportions in this day and age, the same racial 1992-SBA-PAC had recommended Alan Schact for promotion, even though Schlact had no publications." What more proof, a judge can demand from the Plaintiff of the prevalence of racial-hatred on the KSU-campus against the Plaintiff.]

Judge-Magistrate is the best witness to affirm that "internal-service pretext was false and fraudulent"

Judge-Magistrate is the best witness to prove that promotion-denial on the false-pretext of internal-service-deficiency was fraudulent, because according to judge-Magistrate, Plaintiff was fully qualified, but it was the departmental-politics (and not internal-service), that was the real reason for promotional-denial.

Page-51 "**may** have evaluated others more harshly"

In an extraordinary zeal to champion the cause of the defendants, the ex-defense-lawyer Judge-Magistrate writes (RR-51): "The fact that he (new-Chair) **may** have evaluated faculty ....more harshly than his predecessor does not indicate retaliatory motive." Judge is speculating on the part of the defendants by using the word "may have" and calling it "the fact." (even Judges contradictory statements raises jury-questions!!!) "May have" can never be "the fact," it has to be substantiated, and the defendants have not substantiated it. Plaintiff's scholarship, teaching, and service were far greater than other faculty, so even if other faculty were rated harshly, the Plaintiff did not deserve it without "a retaliatory motive."

Page-48: "Curley's pointed-letter" is Retaliatory

Bulk of Judge's opinion is based upon Curley's 1994-letter which was retalitory, the Judge ignores the glowing support-letters written by Kochman and Henssler, who have Ph.D. in finance and

who are more qualified to evaluate Tiwari than Curley. Curley subsequently resigned as Chair, Curley is now only a regular faculty.

Curley's 1994-letter was anything but a pointed-letter; it was pure "retaliatory" and discriminatory. Curley's 1994-letter is retaliatory written for the sole purpose of misguiding the judges and Jury about Tiwari's credentials relative to Caucasians, because:

(1) Curley's 1994-letter is in stark contrast to Curley's 1992-letter where Curley applauded Tiwari's scholarship and promotability
(2) it is also in contradiction with Curley's 1995-letter
(3) it does not correspond to the KSU-manual definition of scholarship
(4) it does not correspond with Finance-literature-Index-Heck that grades Tiwari with more finance-publications than all the Caucasians,
(5) Curley's 1994-letter is an act of instant-retaliation which was written within 7 days of Tiwari's racial-complaint,
(6) Curley's 1994-letter was written with vengeance with a purpose of serving as a "blue-print" for the subsequent 5 review-committee-levels to "punish" Tiwari by denying him promotion permanently.
(7) Curley's 1994-letter was also "discriminatory" because Curley had not written such a letter to any Caucasian,
(8) It was instant retaliatory because Curley had never written such a letter before or after October-1994.
(9) Curley's 1994-letter is also a confession in which Curley acknowledges to the effect that he had unlawfully intervened in the committee-process by talking to other committee memberss, "The ambiguities of some parts ...have lead a majority of the PAC to not recommend promotion.." How would Curley know who voted against Tiwari, unless Curley unlawfully talked to individual PAC-members
(10) Judge did not even bother to read the recommendation letters of Kochman and Henssler who are more qualified than Curley since they have Ph.D. in finance; the Judge drew his conclusions exclusively based upon the retaliatory-letter of Curely's 1994-letter. Jury has to compare Curley's retaliatory letter against the strong support letters of Kochman and Henssler.

(11) Curley's letter became a permanent part of Tiwari's portfolio so that the new Chair could follow up on that to deny promotion and salary-raises to Tiwari in future

Page-49: Vice-President Rugg's Retaliation

Rugg had not sent such a retaliatory letter at the conclusion of 1992-93 promotion process, because Tiwari had not complained about discrimination to Rugg; but when Tiwari complained about discrimination to Rugg in 1996. But on January-24, 1996, Tiwari complained to Rugg about racial discrimination to which Rugg immediately retaliated by sending a memo to Chair and Dean urging them to downgrade Tiwari's annual evaluations and asking them to closely document Tiwari.

De-facto, Rugg denied promotion to Tiwari for raising discrimination issue (by stating that Rugg would simply approve the promotion-denials of the PACs) right on the spot during the Rugg-Tiwari meeting of January-24, 1996, which was even prior to the college-wide PAC-meeting. Rugg's. On February 1, 1996, Rugg sent a formal promotion-denial letter to Tiwari immediately after the college-wide PAC. Rugg's statement is retaliatory because Tiwari had heard and understood Curley's feedback following which Tiwari had made above-expectations contributions year after year. How can Tiwari have a hearing problem and yet provide above-expectations contributions to KSU throughout his employment, 1988-95. Notwithstanding Tiwari's exemplary above-expectations contributions for 1988-1995, Rugg's letter says "Plaintiff had a very difficult time hearing, understanding, and accepting the evaluative and constructive feedback..." How can Tiwari provide above-expectations contribution to KSU year after year and then be judged as deficient in hearing and understanding at the same time; these two events are mutually exclusive and contradictory. As a matter of fact, it is KSU-officials who have refused to hear, understand, and accept the grievances of Tiwari, Jews, and Blacks. Taxpayers and the people of Georgia (the real bosses of KSU-officials) have already spoken loud and clear that Rugg-Siegel have unlawfully retaliated against Candace Kaspers (as proven in court that cost KSU $750,000), yet even as of today, Rugg-Siegel appear to continue to refuse to accept the verdict of their real-bosses; and in so doing Rugg-Siegel appear to believe that their real bosses (taxpayers and people of Georgia) are wrong.

OTHER TABLES OF CITATIONS
(from the Briefs of 11th circuit court of appeals)

1. TABLE OF CITATIONS

The following **table of citations** had been submitted to the United States Court of Appeals for the Eleventh Circuit (No. 98-9274) in the Brief Of Plaintiff-Appellant, Kashi Nath Tiwari. These citations are very extensively defined; it is a part of the court record and will be made available upon request by the Justices of this Supreme Court.

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Anderson v. Liberty Lobby,
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975 F.2d 792 (11th Cir. 1992) — 20, 50

Buxton v. City of Plant City, Florida,
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833 F.2d 1525 (11th Cir. 1987) 26-28

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450 U.S. 248, 101 S. Ct. 1089, 67 L.Ed.2d 207 (1981) 26

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2. TABLE OF CITATIONS

The following TABLE OF CITATIONS had been submitted to the United States Court of Appeals for the Eleventh Circuit (No. 98-9274) in the Reply-Brief Of Plaintiff-Appellant, Kashi Nath Tiwari. These citations are very extensively defined; it is a part of the court record and will be made available upon request by the Justices of this Supreme Court.

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Keaton v. University of Nev. Sys.,
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107 F.3d 846 (11th Cir. 1997) 1

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113 S.Ct. 2742 (1993) 3

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450 U.S. 248, 101 S. Ct. 1089, 67 L.Ed.2d 207 (1981) 11

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3. TABLE OF CITATIONS

The following TABLE OF CITATIONS had been submitted to the United States Court of Appeals for the Eleventh Circuit (No. 98-9274) in the "Appellant's Petition For RehearinG" Of Plaintiff-Appellant, Kashi Nath Tiwari. These citations are very extensively defined; it is a part of the court record.

CASES

Combs v. Plantation Patterns (Meadowcraft, Inc.), 106 F.3d 1519 (11th Cir. 1997)	3, 7, 8, 10
Furnco Constr. Corp. v. Waters, 438 U.S. 567, 98 S. Ct. 2943, 57 L. Ed. 2d 957 (1978)	7
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St. Mary's Honor Center v. Hicks, 509 U.S. 499, 113 S.Ct. 2742 (1993)	7, 9

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42 U.S.C. § 2000e et seq

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Exhibit-A

September 21, 1995

Search Committee
Department of Economics and Finance

I would like to apply for the position as Chair of the Department of Economics and Finance. For ten years Mike has provided superb leadership for the department and whoever replaces him has much to live up to. I have an established record of working successfully with all members of the department and have a strong academic record. I strongly believe in professional development and infect other people with the desire for continuing professional growth.

I think of my role as working at a university and not a four year college and seek opportunities that such a perspective encourages. I enjoy working and collaborating with faculty members in the School of Business and in other schools on the campus. Interacting with community and business people has enabled me to secure financial support for a wide variety of programs. I have raised approximately $181,000 during the last year and some of the programs are funded by renewable grants.

My experience with the Georgia Consortium, the Private Industry Council, and the W. K. Kellogg Foundation has positioned me to deal in a productive manner with the department advisory board. I view my colleagues as talented professionals and would consider it a privilege to serve as their Chair.

Sincerely yours,

Billie Ann Brotman, Ph.D.
Professor of Finance

BILLIE ANN BROTMAN
Associate Professor of Finance
Department of Economics and Finance
Kennesaw State College

I. COLLEGIATE AND PROFESSIONAL EDUCATION

Post-Doctoral Courses
Wright State University, 1983 (Finance)
Xavier University, 1983 (Finance)
Georgia State University, 1991-1992 (Accounting)

Ph.D.
University of Notre Dame
1978
Major Area: Economics

M.A.
University of Notre Dame
1977
Major Area: Economics

M.H.A.
Georgia State University
1994
Major Area: Health-Care Administration

B.S.
Arizona State University
1974
Major Area: Speech Pathology

II. EDUCATIONAL TRAINING BEYOND LAST EARNED DEGREE

III. TEACHING EXPERIENCE

1989-Present
Department of Economics & Finance
Kennesaw State College, Marietta, GA 30061
Professor of Finance

Courses Taught:

Managerial (Corporate) Finance	Real Estate Finance
Real Estate Appraisal	Real Estate Investment Analysis
Introduction to Gerontology (guest speaker)	Principles of Real Estate
International Economics & Finance	Principles of Insurance

1988
University of Zimbabwe
(UN/AED one-year appointment)
Curriculum Development for MBA program

1984
American Institute of Banking
Lecturer

1980-1981
Boston University Overseas, West Germany
MBA Program

IV. MEMBERSHIP IN PROFESSIONAL AND HONOR SOCIETIES

These memberships were held at various times and for various durations over the past ten years.

Northeast Decision Sciences
Eastern Finance Association
Financial Management Association
American Risk and Insurance Association
Southern Finance Association
Southwest Finance Association
Western Risk and Insurance Association
American Finance Association
Midsouth Academy of Economics and Finance
Western Social Science Association

V. GRANTS

LEAP Consortium Grant: I applied for and was awarded a two-year grant to act as a consortium evaluator for a health and education project funded by the W. K. Kellogg Foundation. I am the director of the evaluation team and responsible for evaluation of the activities of the Georgia Consortium for the W. K. Kellogg Foundation ($60,000).

Academic Scholarship Program: I wrote and processed the grant application with the Private Industry Council for scholarships to be awarded to Kennesaw State College students residing in Cobb County. The program will sponsor an unlimited number of students who meet the financial guidelines. The grant was initially awarded for the academic year 1994-1995, and has been renewed for the academic years 1995-1996 ($ unlimited).

Federal Job-Training Grant: I wrote a federal job training grant which was funded for the fiscal year 1995-1996. Twenty Cobb-County youths receive computer-literacy training at what was formerly the Rose Garden Hills Elementary School. Some of the youths will do their internships at Kennesaw State College. I am the campus director of this grant. This grant enables poor areas of Cobb County to have training and

access to computers ($ 39,000). An additional $21,000 in matching funds are anticipated from the W. K. Kellogg Foundation.

United Way Grant: My application was a semi-finalist for a United Way grant to be awarded in 1995-1996. The grant was for software to be used in the after-school tutorial programs at the Rose Garden Hills Elementary School and the learning center at Kennesaw Village Apartments. There were thousands of applicants for this grant ($9,000).

Nurse-Practitioners Grant: I introduced the plan of using Kennesaw State College nursing faculty and students in the Cobb County Board of Health primary care health clinics. The Board of Health has agreed to provide proctors for the nurse practitioner students. The suggestion and encouragement that I gave to the School of Nursing and the Board of Health resulted in a $60,000 renewable grant which was awarded to the Kennesaw State College School of Nursing. This grant is renewable on an annual basis.

VI. PUBLICATIONS AND ARTICLES

"Hospital Indigent Care Expenditures," Journal of Health Care Finance, Summer, 1995

"Impact of Noise Pollution on Property Values" (Abstract), Proceedings Journal of the Western Social Science Association, April, 1995

"Payor Mix: Implications for Charity Care Funded by a Hospital," Midsouth Economics and Finance Proceedings Journal, 1994

"Postretirement Healthcare Benefit Rules Require Careful Study," Healthcare Financial Management, March, 1994

"Arbitration Awards in the Health Care Industry," Labor Law Journal, January, 1994

"Private Mortgage Insurers' Solvency Discussed", Proceeding Journal of the Northeast Decision Sciences Association, 1993.

"Profitability: Evidence from the Private Mortgage Insurance Industry", Midsouth Economics and Finance Proceedings Journal, 1993.

"Assessing Private Mortgage Insurers' Solvency", Real Estate Finance, Summer, 1992.

"A Comparative Analysis of Value Line, Standard and Poor and Moody's Industrial Bond Ratings", Business Review, Summer, 1990.

"Thin Trading and Beta Stability on the Zimbabwe Stock Exchange", Nigerian Journal of Economics and Social Studies, accepted January, 1990.

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"The Impact of Economic Conditions on the Incidence of Arson", Journal of Business and Economic Perspectives, Fall, 1988 (w/ P. Fox).

"Principles of Insurance", book review, Journal of Risk and Insurance, March, 1988.

"Financial Ratios, Best's Rating and Predictive Models Identifying Insurer Bankruptcy", The Journal of Insurance, Issues and Practices, January, 1988.

"The Financial Trade-Offs Between Housing Starts and Mobile Home Sales", The Real Estate Appraiser and Analyst Journal, Spring, 1987.

"The Application of Option Models to the Reinsurance Market", The Journal of Insurance, Issues and Practices, January, 1987.

"A Comparison Between Arbitration and National Labor Relations Board Decisions Concerning Union Security Clauses", Labor Law Journal, December, 1986.

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"The Geometry of Risk Transfer via Automobile Service Contracts", Northeast American Decision Science Proceeding Journal, March, 1986 (w/ J. Benich).

"Risk and Insurance", book review, Journal of Risk and Insurance, December, 1985.

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"Conducting Internal Bank Audits: A Blend of Old and New Procedures", Regional Business Review, October, 1985.

"A Comparative Analysis of NLRB and Arbitration Decisions Involving Unilateral Wage Changes", Labor Law Journal, October, 1985.

"Planning for Retirement: An Integral Part of Your Personal Plan", Business and Public Affairs, Fall, 1985.

"A Comparative Analysis of Arbitration and National Labor Relations Board Decisions Involving Wildcat Strikes", Labor Law Journal, July, 1985.

"The Impact of Tax Shelters on Investment Yields and Financial Planning", Southwest Business Symposium Proceedings Journal, April, 1985.

"A Research Survey of Early Warning Systems to Identify Financially Troubled Banks", Northeast American Institute of Decision Sciences Proceeding Journal, 1985.

"Purchasing *vs.* Leasing an Automobile: A Cost Benefit Analysis", Midsouth Journal of Economics and Finance, 1985.

"Abstract, Decision Sciences Newsletter", ORSA Special Interest Group on Decision Analysis, Vol. 4, 1985, page 13 (Tulane University).

"Capital Budgeting: Current Practices and Changes Over a Decade", Southern Ohio Business Review, Fall, 1984.

"Constructing Inflation Hedged Portfolios", Southern Business Review, Spring, 1984.

"Managing the Float in the Computer Era: Its Impact on Transactions Made by Banks, Businesses and Households", Southwest Business Symposium Proceedings Journal, 1984.

"Constructing Inflation Hedged Portfolios", abstract proceedings of the 10th annual meeting of the Eastern Finance Association, The Financial Review, 1983.

VII. PROFESSIONAL PRESENTATIONS

"Impact of Noise Pollution on Property Values", Western Social Science Association, March, 1995.

Georgia Consortium Evaluation Report, Directors and Evaluators Meeting, W. K. Kellogg Foundation, Michigan, October, 1995 (scheduled).

Georgia Consortium Evaluation Report, Annual Meeting of the Community-Based Health Initiative, W. K. Kellogg Foundation, North Carolina, June, 1995.

Georgia Consortium Evaluation Report, Directors and Evaluators Meeting, W. K. Kellogg Foundation, Massachusetts, October, 1994

Annual Asia-Pacific Seminar, participant, April, 1994.

Midsouth Economics and Finance Association, session chair, February, 1994.

Southeast Regional Conference, Federal Reserve Bank of Atlanta, participant, 1993.

"Private Mortgage Insurers' Solvency Discussed", Northeast Decision Sciences Association, 1993.

"Profitability: Evidence from the Private Mortgage Insurance Industry", Midsouth Economics and Finance Association, 1993.

Federal Reserve Bank, Seminar Series, Participant, 1990, 1991, 1992, 1993.

"Recent Economic Trends and Construction Spending", American Real Estate Society, March, 1990.

"The Reliability of Bond Rating Models", Eastern Finance Association, April, 1990.

"A Comparison Between Best's, Value Line, Moody, and Standard and Poor's Insurer Ratings", Eastern Finance Association, 1989.

"Reliability and Degree of Correlation Between Best's Insurer Rating and Reported Financial Information", American Risk and Insurance Association, 1988.

"The Geometry of Risk Transfer via Automobile Service Contracts", Northeast American Institute of Decision Sciences, 1986.

"The Impact of Economic Conditions on the Incidence of Arson Revisited", Eastern Finance Association, 1986.

"The Need for Continued Competence in the Insurance Industry", Western Risk and Insurance Association, 1986.

"Maintaining Profits: Hedging Interest Rate Fluctuations", Midwest American Institute of Decision Sciences, 1986.

"The Impact of Tax Shelters on Investment Yields, and Financial Planning", Southwest Business Symposium, 1985.

"A Research Survey of Early Warning Systems to Identify Financially Troubled Banks", Northeast Institute of Decision Sciences, 1985.

"Motor Vehicle Acquisition: To Lease or Finance a Relative Cost Analysis", Midsouth Academy of Economics and Finance, 1985.

"A Primer for Investors", Discussant, Southwest Business Symposium, 1985.

"Capital Budgeting: A Survey of Current Practices", Midsouth Academy of Economics and Finance, 1984.

"Managing the Float in the Computer Era: Its Impact on Transactions Made by Banks, Businesses and Households", Southwest Business Symposium, 1984.

"A Preliminary Investigation: The Transfer of Opportunity Costs", Missouri Valley Economics Association, 1983.

"Constructing Inflation Hedged Portfolios", Midsouth Academy of Economics and Finance, 1983.

"*De Facto* Closed Shop Arrangements in the Construction Industry", Kentucky Economics Association, 1979.

"Urbanization Economics in the Financial Service Industry", discussant, Midsouth Economics and Finance Association, 1983.

"Competition in the Lessor Market with Unleveraged and Leveraged Leasing", Discussant, Eastern Finance Association, 1989.

"An Analysis of the Effects of a Comparative Price Program on Competition in Consumer Credit Markets", Discussant, Financial Management Association, 1986.

"The Relationship Between Macroeconomic Conditions and Prepayment of Freddie Mac PCs", Discussant, Southern Finance Association, 1986.

"Intra-Market Test of Efficiency of the Housing Market", Financial Management Association, Discussant, Financial Management Association, 1986.

"Productivity in Insurance: An Analysis of the Comprehension of New Policies", Discussant, Midsouth Academy of Economics and Finance, 1985.

"A Comparison of Urban vs. Rural Attitudes Concerning Institutions", Discussant, Midsouth Academy of Economics and Finance, Discussant, 1985.

"Jackknife Beta and the Value-Weighted Bias", Southwest Business Symposium, Discussant, 1985.

Chairperson, Midsouth Academy of Economics and Finance, Public Finance Session, 1984.

"Collective Bargaining Contracts, Wage Rigidity and Layoffs", Discussant, Midsouth Academy of Economics and Finance, 1984.

"Detecting Bid Rigging: A Case Study of a Dairy Market", Discussant, Midsouth Academy of Economics and Finance, 1984.

"Advertising Behavior in the Canadian Real Estate Brokerage Industry", Discussant, Missouri Valley Economics Association, 1984.

Chairperson, Southern Finance Association, 1984.

"The Impact of Diesel Fuel Allocation and Tillage Practices and Total Energy Consumption for a Risk Adverse Corporate Producer", Discussant, Missouri Valley Economics Association, 1983.

"Pay Through Bonds - How Financial Institutions Can Increase Their Profits on Long-Term Low Interest Yielding Real Estate Mortgages", Discussant, Midwest Finance Association, 1983.

"Inflations Impact on Stock Market Returns", Discussant, Eastern Finance Association, 1983.

"Rating Changes and New Bond Issues", Discussant, Midwest Finance Association, 1983.

"The Interplay of Eurodollar Market in the International Monetary System", Discussant, Missouri Valley Economics Association, 1982.

"Toward a Biological Theory of Oligopoly Competition", Discussant, Midsouth Academy of Economics and Finance, 1982.

"The Risk Analysis of Participant Behavior in Sweepstakes' Contests", Discussant, Midsouth Academy of Economics and Finance, 1982.

"Ricardian Dynamic Theory of International Trade", Discussant, Missouri Valley Economics Association, 1980.

"Advertising as a Means of Measuring Labor Demand", Discussant, Midwest Economics Association, 1979.

Co-Editor(Founder) Kentucky Journal of Economics and Finance, 1980-81.

Editorial Board, Midsouth Journal of Economics and Finance, 1984-1993.

Contributor, questions for the International Finance Session New York Board of Regent's Examination, 1984.

Reviewer, Journal of Insurance, Issues and Practices September, 1988.

Seminar: funded by the Chicago Board of Trade, 1984.

Reviewer, Real Estate Appraisal, Southwestern Publishing, 1991.

VIII. INSTITUTIONAL AND COMMUNITY SERVICE:

Participant: Cobb County Leadership Consortium, 1995-1996.

Campus Director: Federal Job-Training Grant, 1995-1996.

Member: Department Tenure and Promotion Committee, 1995-1996.

Evaluator: Georgia Consortium, Kellogg Health Initiative, 1994-1996.

Grant: Cobb County Board of Health, WIC Program Utilization Study, 1994.

Introduced New Courses: Real Estate Appraisal, 1990.
Real Estate Investment & Analysis, 1991.
Health-Care Administration, 1994 (designed).

Member: *Ad Hoc* Promotion & Tenure Committee, 1990-1991.

Member: Kennesaw State College Senate (Department Representative), 1993-1996

Member: Faculty Caucus, 1993-1996

College Representative: Northeast Decision Sciences Association, 1993-present

Member: Graduate Curriculum Committee, 1993–1995

Participant: Discussion Group Concerning Faculty Senate (one day retreat)

Advisor: CAPS, 1989–1990.

Advisor: MBA & undergraduate finance majors, 1989–present.

Library Committee: Department Representative, 1991–1993.

Member: Preston Award Committee, 1991–1992.

Participant: Leadership Kennesaw State, Academic Year 1991–1992.

Attended Alumni Luncheon, 1990, 1991, 1992.

Attended: Departmental, School and College meetings and two graduations per year as required.

Attended: Emory/Federal Reserve workshops, 1989–1994.

Attended: Computer workshops given by Kennesaw State College Staff, 1989–1990.

Member: Family Business Forum Committee, 1992–1994.

Participant: Working-Paper Series, School of Business Administration, 1993, 1995.

IX. EMPLOYMENT HISTORY

1989–present: Associate Professor of Finance
Kennesaw State College
Marietta, GA

1986–1989: Associate Professor of Finance
Memphis State University
Memphis, TN

1983–1986: Assistant Professor of Finance
College of Charleston
Charleston, SC

1978–1982: Assistant Professor of Economics and Finance
Northern Kentucky University
Highland Heights, KY

KENNESAW STATE COLLEGE
Department of Economics and Finance
Michael J. Coles School of Business
Post Office Box 444
Marietta, Georgia 30061-0444
(404) 423-6091
(404) 499-3209 Fax

Exhibit-B

October 16, 1995

Dr. Randall B. Goodwin
Chair, Search Committee
Department of Economics and Finance
Michael J. Coles School of Business
P.O. Box 444
Kennesaw State College
Marietta, GA 30061-0444

Dear Randy:

I write to submit my application for the position of Chair of the Department of Economics and Finance. Attached please find my curriculum vita.

I received a doctorate in Economics in 1990 and recently began my eleventh year of teaching economics and finance at the college level. Prior to joining Kennesaw State, I held faculty positions at West Virginia University and Georgia State University. In each venue, I have demonstrated a strong commitment to advancing the institution while sustaining a collegial work environment. Furthering the interaction between our academic institution and the regional business community remains a high priority. These are commitments which I would like to extend in a capacity as department chair.

Please keep me informed as to the progress of the search. I may be reached at office (770) 423-6144 or at home (770) 438-6949.

Sincerely,

Roger Tutterow, Ph.D.
Associate Professor

CURRICULUM VITAE
Roger Tutterow

EDUCATION:
Ph.D., Economics, Georgia State University, August 1990
M.A., Economics, Georgia State University, March 1988
B.S., Decision Science, Berry College, November 1983

ACADEMIC EXPERIENCE:
Associate Professor of Economics, Kennesaw State College, July 1995 - date.
Assistant Professor of Economics, Kennesaw State College, September 1991 - July 1995.
Undergraduate Courses Taught: Economics Issues and Concepts, Principles of Economics-Micro, Principles of Economics-Macro, Money and Banking, Intermediate Microeconomics, Managerial Economics, Econometrics, Topics in Financial Economics.
Graduate Courses Taught: Economic Analysis (MBA), Managerial Economics (MBA), Statistical Analysis for Decision Making (MBAEP), Strategic Decision Making and Competitive Pricing (MBA)
Managerial Microeconomics (MBAEP).

Assistant Professor of Economics, West Virginia University, August 1990 - September 1991
Undergraduate Courses Taught: Principles of Economics-Micro, Principles of Economics-Macro, Intermediate Microeconomic Theory
Graduate Courses Taught: Advanced Microtheory II (Ph.D. in Economics Core course)

Instructor of Economics, Georgia State University, September 1989 - June 1990.
Undergraduate Courses Taught: Money and Banking.
Graduate Courses Taught: Managerial Microeconomics (MBA), Applied Microeconomic Analysis (Ph.D. in Business Administration Core course)

Instructor of Economics, Kennesaw State College, September 1988 - September 1989
Undergraduate Courses Taught: Principles of Economics-Micro, Principles of Economics-Macro, Money and Banking.

Graduate Teaching Assistant, Georgia State University, September 1985 - September 1988
Undergraduate Courses Taught: Principles of Economics-Micro, Principles of Economics-Macro, Money and Banking.

OTHER PROFESSIONAL EXPERIENCE:
Co-Director, Econometric Center, Kennesaw State College, Summer 1993-date.
Developed, secured funding for, and directs Metropolitan Atlanta Consumer Confidence Survey. Oversees construction of statistical forecasting models. Developed survey questionaire and conducted data analysis for Family Business Institute's Estate Tax Project.

Economic Analyst, Southern Bell Corporation, June 1987 - September 1987.
Developed methodology for econometric cost analysis for use in Public Service Commission hearing. Assisted in estimating demand model for use in Florida Public Service Commission hearing.

Consulting Economist, 1987 - date.
Provided economic analysis for litigation. Oversaw estimation of cost of capital for private corporation.

PROFESSIONAL AFFILIATIONS:
National Association of Business Economists, Member
American Economic Association, Member
Eastern Economic Association, Member

PUBLICATIONS - ARTICLES:

"On the Rank, Generalized Lorenz, and Overtaking Criteria for Evaluating Stochastic Income Regimes" (with Rubin Saposnik), Southern Economic Journal, Volume 58, Number 3, (January 1992), 583-592.

"Recent Evidence on Commodity Prices as Leading Indicators of CPI Inflation", Atlantic Economic Journal, (June 1995).

PUBLICATIONS - BOOK REVIEWS:

Gambling and Speculation: A Theory, a History and a Future of Some Human Decisions, Reuven Brenner with Gabrielle A. Brenner, (Book Review), Southern Economic Journal, Volume 60, Number 2, (October 1993) 534-536.

CURRENT RESEARCH:

"Rank Dominance, Stochastic Dominance and the Ordering of Income Distributions", (with R. Saposnik), under review, *Economic Letters*.

"On Risk Sharing and the Attainment of Uniform Overtaking", currently under revision.

"The Welfare Benefit of Risk-Sharing" (with A. Acharya), currently under revision.

PROFESSIONAL ACTIVITIES:

Discussant, "Applications of Stochastic Dominance", 17th Meetings of the Eastern Economic Association, Pittsburgh, PA, March 1991

Presentation, "On Risk-Sharing and Overtaking", 61st Conference of the Southern Economic Association, Nashville, TN, November 1991.

Discussant, "Economics of Sports, Entertainment and the Military", 61st Conference of the Southern Economic Association, Nashville, TN, November 1991.

Session Chair, "Topics in Microeconomic Theory", 67th Conference of the Western Economic Association, San Francisco, CA, July 1992.

Presentation, "On Coalition Behavior and the Foundations of Characteristic Function Games", 67th Annual Conference of the Western Economic Association, San Francisco, CA, July 1992.

Presentation, "Rational Coalition Behavior and Coalition Form Games: How Characteristic are Characteristic Functions?", 19th Meetings of the Eastern Economic Association, Washington, DC, March 1993.

Session Chair, "Topics in Applied Microeconomics", 20th Meetings of the Eastern Economic Association, Boston, MA, March 1994.

Presentation, "On the Attainment of Uniform Overtaking for Stochastic Income Regimes with Risk Sharing", 20th Meetings of the Eastern Economic Association, Boston, MA, March 1994.

Discussant, "Models of the Political Process: I", 69th Annual Conference of the Western Economic Association, Vancouver, BC, July 1994.

Presentation, "On a Class of Linear Income Orderings", 21st Meetings of the Eastern Economic Association, New York, NY, March 1995.

Text Reviewer, Managerial Economics and Business Strategy, Baye & Beil, August 1994.

Text Reviewer, Managerial Economics and Organizations, Binkley, Smith & Zimmerman, September 1994 - date.